

1 THE STATE OF OHIO,)
2) SS: Judge Maureen Clancy
3 COUNTY OF CUYAHOGA.)

4 IN THE COURT OF COMMON PLEAS
5 (CRIMINAL BRANCH)

6 THE STATE OF OHIO,)
7)
8 Plaintiff,)
9 vs.) Case No. CR-604767
10 ANTHONY NOVAK,) Vol. 1 of 2
11)
12 Defendant.)

13 - - -
14 TRANSCRIPT OF PROCEEDINGS
15 - - -

16 APPEARANCES:

17 Timothy J. McGinty, Prosecuting Attorney, by:
18 Anna M. Woods, Assistant Prosecuting Attorney,
19 and
20 Anthony T. Miranda, Assistant Prosecuting Attorney,
21 On behalf of the State of Ohio.

22 Connick Law, LLC, by:
23 Gary A. Vick, Jr., Esq.,
24 and
25 Edward A. Proctor, Esq.,

On behalf of the Defendant.

26 Cindy M. Eiben, RMR
27 Jeniffer L. Tokar, RMR
28 Marguerite A. Phillips, RMR
29 Official Court Reporters
30 Cuyahoga County, Ohio

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12 BE IT REMEMBERED, that at the
13 MAY, A.D. 2016 Term of said Court, this
14 cause came on to be heard before the
15 Honorable Maureen Clancy, and a jury, in
16 Courtroom No. 20-B, The Justice Center,
17 Cleveland, Ohio, on Wednesday, August 10, 2016,
18 upon the indictment filed heretofore.
19

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I N D E X

Voir Dire Examination: Not Transcribed

State's Witnesses:

	Direct	Cross	Redirect
Kevin Riley	58	67	78
Daniel Heinz	93	101	
Lisa Jerman	107	111	115
Michael Klein	116	137	144
Thomas Connor	149	226	245

- - -

E X H I B I T S

State's Exhibits:

	Received
No. 1 - official Parma Police Department Facebook pages	249
No. 2-B - isolated text messages from Novak	249
No. 7 - screen shot of posts	251
No. 8 - screen shot of post on Facebook, re: Subway robbery	251
No. 9 - disk of dispatch calls	251
No. 10 - two Facebook banners	251
No. 11 - Novak's personal Facebook page	251
No. 12 - Novak's personal Facebook page	251
No. 13 - Novak's pages that he likes or follows	251
No. 16 - records from Facebook of fake page	251
No. 17 - screen shot of Novak's posts	251
No. 18 - screen shot of Novak's posts	251
No. 19 - CD of images from Novak's computer	N/A
No. 20 - complete Facebook record of Novak	251
No. 21 - screen shot of fake homeless post	251
Nos. 22-32 - photos from search warrant Novak's house	251

- - -

Defense Exhibits:

	Received
B - Affidavit and Search Warrant	265
F - news release about fake Facebook page	265

- - -

1		
2		Page
3	Motion Hearing of August 2, 2016-----	5-18
4	Motion hearing of August 5, 2016-----	19-39
5	Motion hearing 404(B) and motion in limine----	40
6	Opening Statements by the State-----	50
7	Opening Statements by the Defense-----	52
8	Defendant's Motion for Directed Verdict-----	253/264
9	Closing Arguments by the State-----	269
10	Closing Arguments by the Defense-----	275
11	Final Arguments by the State-----	286
12	Charge of the Court-----	291
13	Verdict-----	317
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 TUESDAY, AUGUST 2, 2016

2 MORNING SESSION

3 - - - -

4 THE COURT: We're here today in the
5 case of State of Ohio versus Anthony Novak, 604767.
6 Present in court is the Defendant, Anthony Novak, with
7 his counsel, Mr. Vick. And here representing the State
8 of Ohio is assistant county prosecutor Mr. Anthony
9 Miranda.

10 We're here today on State's motion to allow
11 video testimony and on the Defendant's motion to
12 dismiss. I'm going to first proceed on the Defendant's
13 motion to dismiss. Okay, Mr. Vick, on behalf of the
14 Defendant.

15 MR. VICK: Thank you. May it please
16 the Court. Good morning, Your Honor.

17 THE COURT: You can stay at the table.
18 You don't have to be formal.

19 MR. VICK: Your Honor, this case was
20 indicted alleging that Mr. Novak used a computer to
21 disrupt, interrupt or impair the function of the police.
22 The use of the computer that's alleged to have committed
23 that crime was the Defendant creating a Facebook profile
24 that mimicked the Facebook profile of the Parma Police
25 Department.

1 When he set that Facebook profile up, he
2 then sent out six, one could call them comedic; one
3 could call them asinine; one could call them absurd; one
4 could give any type of adjective or descriptive term
5 they want to those Facebook postings.

6 I think the first one was that the City of
7 Parma was holding a Pedophile Reform event in a Catholic
8 church.

9 The content of those Facebook postings is
10 what's going to be important for this Court's
11 determination as to whether to grant or deny the motion
12 to dismiss.

13 I think both sides have done a very good job
14 briefing this issue. I don't want to recite the lengthy
15 words, lengthy pages that were contained in the motion
16 to dismiss and brief in opposition to the motion to
17 dismiss. I would just like to clarify, point out a few
18 things.

19 The first amendment doesn't just protect
20 speech. The first amendment also protects a handful of
21 other types of behavior; that's the right to assemble,
22 the right to protest, the right of free expression and
23 the right to practice the religion of your choice.

24 This case just deals with the speech aspect
25 of it. The difficult part for the law is, as this Court

1 is well aware, in trying to get text messages admitted
2 into evidence or trying to get things that are placed
3 out of line into evidence, that the courts are somewhat
4 slow to catch up on the evolving technological systems
5 that exist in 2016.

6 What do you do with text messages, Facebook
7 profiles, Instagram snapshots, ton of different avenues
8 for people to engage in protected speech? There is a
9 litany of avenues for people to engage in speech that
10 isn't protected; fighting words, incitement to unlawful
11 actions, bullying.

12 But, I think what is important to note is
13 that this analysis starts in 1997, with the Reno versus
14 ACLU case. In that case, the Court deemed that speech
15 that is broadcast over the Internet or speech put in
16 Facebook or Twitter, is constitutionally protected. Not
17 only is it constitutionally protected under the first
18 amendment, it is given the highest level of
19 constitutional scrutiny.

20 There is, as this Court knows, there is
21 three tiers of constitutional scrutiny; low,
22 intermediate and strict scrutiny. And, we would submit
23 to this Court that when the Court analyzes subsection B
24 of this statute under which Mr. Novak was charged, that
25 it engage in strict scrutiny analysis. That is what

1 Reno held. Reno held on line communications and on line
2 speech, when afforded the highest level of
3 constitutional protections, are akin to print media;
4 it's akin to news media; it's akin to reporting.

5 Your Honor, we would suggest that this case
6 is remarkably similar, if not identical, to the United
7 States of America's Supreme Court decision in Houston
8 versus Hill. In that case, it dealt with words that are
9 very similar and identical to the words used in this
10 statute.

11 The argument there was a person was using
12 vulgarity and obscene words and speech and phrases to a
13 police officer. And, they charged that person with
14 unlawful use of a computer system and other criminal
15 offenses. And, the Supreme Court of the United States
16 held that statute was overbroad and the statute was
17 overbroad because it punished and criminalized
18 constitutionally protected speech and that speech then
19 is constitutionally protected under Reno versus ACLU.

20 From there, the Defendant, Mr. Novak, is
21 cited to a handful of other cases. All of this deals
22 with speech and all of which the courts have protected
23 the speech and held that the statute's attempting to
24 criminalize that speech, unconstitutionally, either
25 because they were overbroad or because they were vague.

1 And, there is no real need to go over the
2 elements or analysis of how this Court is going to hold
3 the statute is overbroad. It's more than well briefed
4 in the motions.

5 I would like to take a quick opportunity to
6 address the State of Ohio's brief in opposition. In the
7 State of Ohio's brief in opposition, they urge this
8 Court to use the medium or middle standard of
9 intermediate scrutiny to the O'Brien test, to hold this
10 statute is constitutional and that it is not overbroad.

11 The cases, though, I think they're very
12 important, distinct cases cited by the State of Ohio;
13 City of Erie v Pap's A.M., Rice v Paladin, U.S. v
14 Barnett, U.S. v Varani, those aren't speech cases.
15 They're first amendment cases, but they're not speech
16 cases. They're expression cases.

17 And, expression is given different scrutiny
18 under the constitutional framework and analysis than is
19 speech.

20 City of Erie v Pap's A.M., that was a strip
21 club, attempting to hold the statute unconstitutional,
22 that did not permit women to take all their clothes off.
23 The argument that was set forth by the strip club in
24 that case was that there was some type of artistic
25 expression going on in a strip club.

1 The Court held the O'Brien test applies.
2 It's not afforded strict scrutiny and that the statute
3 was not overbroad and it didn't criminalize protected
4 speech.

5 The other cases that were cited, Rice v
6 Paladin, that dealt with a person that put forth
7 material, in a written word, to actually entice someone
8 else to commit murder. U.S. v Varani dealt with IRS
9 lawsuits. And, the Barnett case dealt with a
10 manufacturer of PCP.

11 Those cases deal with expression. They
12 don't deal with speech. This case deals with speech
13 which is absolutely protected under the highest level of
14 protections pursuant to Reno v ACLU.

15 The most important aspect of these cases is
16 that the statute, the general assembly could have
17 narrowly tailored this statute only to apply to on line
18 communication that can be classified as fighting words
19 or that can be classified as, it's someone inciting
20 someone else to commit unlawful imminent action or any
21 of the other two ways of speech or manners of speech
22 that are not protected at all. And, those four are
23 listed in Mr. Novak's motion to dismiss.

24 I think the most important aspect in this
25 holding of the statute unconstitutionally overbroad is

1 the notion in the United States Supreme Court that it
2 provides police officers with complete, unfettered
3 discretion as to how to apply this and complete,
4 unfettered discretion as to how to charge someone with
5 using a computer system to interfere or interrupt with
6 police actions.

7 The statute is certainly preempted by
8 physical actions. You cannot engage in physical actions
9 or engage, using a computer, to commit disorderly
10 conduct. Those types of behaviors are covered by other
11 statutes in the Ohio Revised Code, which leads to the
12 conclusion that this statute generally prohibits and
13 criminalizes speech that is the speech which is
14 protected under the first amendment pursuant to United
15 States Supreme Court precedent, particularly the *Houston*
16 *v Hill* case.

17 Judge, we would ask when the Court conducts
18 its analysis and documents have been brought forth
19 before this Court and the arguments which have been
20 adequately raised in all of the briefing, that the Court
21 finds that Mr. Novak engaged in speech on the Internet,
22 that that speech, pursuant to *Reno v ACLU*, is afforded
23 the highest level of constitutional protection. And,
24 when it conducts its strict scrutiny analysis, that the
25 Court does not find that the government has or is able

1 to put forth a compelling interest which would somehow
2 make it okay for the City of Parma or State of Ohio to
3 stop people's rights to engage in first amendment
4 protected speech.

5 We would ask this Court to find that statute
6 is unconstitutional, not the whole statute, just
7 subsection B of the statute, find that it is
8 unconstitutional as it is overbroad. And, we would
9 submit to this Court that it's also vague because the
10 words it uses are not sufficient to place a person in
11 Mr. Novak's position or a reasonable member of society
12 on notice as to what types of actions can constitute a
13 violation of that section.

14 And then we would ask this Court to dismiss
15 this case and dismiss the indictment against Mr. Novak.

16 Thank you for your time, Your Honor.

17 THE COURT: Okay, thank you. So,
18 you're saying each of these postings that he made on the
19 Parma Police Facebook page, none of those are fighting
20 words or inciting any type of crimes; is that you're
21 saying?

22 MR. VICK: That is correct, Your
23 Honor.

24 THE COURT: Okay. All right.
25 On behalf of the State.

1 MR. MIRANDA: Thank you, Your Honor.
2 May it please the Court. Anthony Miranda on behalf of
3 the State.

4 Mr. Novak is charged with his conduct in
5 creating the fake Parma Police Facebook page. I know
6 the Court has a brief in opposition which we've copied
7 and pasted. The image is nearly an identical image of
8 the Parma Police banner at the top of the page.

9 We believe the evidence will show Mr. Novak
10 was deleting comments that were highlighting the fact
11 that the page was fake. And so just in brief reference
12 to this argument that this was a parody page, we think
13 those facts distinguish this case from those cases, from
14 Hustler, for example, in which the Supreme Court noted
15 that there was an actual parody disclaimer in the
16 article at issue in Hustler. So, we think this is not a
17 protected parody, protected contents.

18 Additionally, this is not, the statute is
19 not geared towards contents. We would be here if the
20 same page had been created and said none of the negative
21 things about police and instead just listed the actual
22 phone number of the Parma Police. That would have the
23 same disruptive effect on Parma Police services. They
24 wouldn't be receiving calls. They would have to expend
25 law enforcement resources in order to end that

1 disruption and it wouldn't implicate any of the content.
2 It wouldn't result from the contents of the page.

3 This prosecution is not about what was said
4 in the comments. It's not about whether or not Parma
5 Police was disparaged, but instead about the effect.
6 That's why we think that the case on point is the
7 O'Brien case, those lines of cases that talk about how
8 just because some criminal acts committed via speech,
9 does not mean that it is protected speech.

10 And, we cite the Paladin case in which the
11 person made the "How to Commit a Murder" book. That is,
12 obviously, not protected speech. If you threaten to
13 kill someone, that's not protected speech. We are
14 prosecuting you for the noncommunicative effect of your
15 speech. Or, another way of saying that is, it's not a
16 content based statute or regulation.

17 So, that's why we, first of all, don't think
18 that this is subject to strict scrutiny. We think it is
19 subject to lesser scrutiny. But, we also think that we
20 passed scrutiny. And, I don't think it can be argued
21 that the State does not have compelling governmental
22 interests here in insuring that these services are not
23 interrupted, that police resources are not wasted.

24 And, we think that it is narrowly tailored
25 to only criminalize those knowing acts that disrupt

1 police services.

2 And, Mr. Novak is citing this Houston v Hill
3 case, but the statute in that case dealt with anyone who
4 opposes police. So, that is obviously a different
5 scenario because it is involving mere criticism of
6 police. Our statute is dealing with the effect of the
7 disruption, the impairment. And, we cite in our brief
8 the footnote in Hill, footnote 11, that the Court in
9 Hill recognized that it would be a different case if
10 someone was following an officer in pursuit and speaking
11 in such way that actually disrupted the pursuit. And in
12 that case, that would be lawfully prohibited because
13 that is disrupting the legitimate police function of
14 pursuing an individual. So, we think that we do satisfy
15 strict scrutiny.

16 Additionally, I don't think that those cases
17 that we cite are making a distinction between expression
18 and speech. I think they're making a distinction
19 between content and known content based regulations.

20 Mr. Novak argues that there is unfettered
21 discretion but there has been no showing that the State
22 has been arbitrarily enforcing the statute. The State
23 has inherent discretion on charging a crime. I think
24 there is a real evidentiary burden here upon the State.
25 It can't be said that this just imposes every innocent

1 citizen to the arbitrary discretion of the State.

2 And then lastly, just with vagueness, I
3 would say that we cite to this case, State v Smith, in
4 the brief. The 2nd District has addressed this exact
5 statute on the question of whether or not the statute is
6 facially vague. And, they concluded it was not facially
7 vague through their addressing subsection A instead of
8 section B.

9 But, there has been no meaning of difference
10 between subsection A. Both of them include a knowledge
11 requirement. Both of them include verbs like interrupt.
12 Ours includes disrupt. I mean, they're very similar
13 subsections. So, I think that's the best case on point
14 in terms of the vagueness discussion.

15 And then lastly, as applied, I don't think,
16 for all the reasons we stated in the brief, that any of
17 these terms are vague, as it is applied to Mr. Novak's
18 conduct. But, I would also encourage the Court to allow
19 for the facts at trial to come out before granting a
20 vagueness as an applied claim, because I think there has
21 to be some evidentiary showing.

22 THE COURT: So, you're saying that the
23 content of what was posted isn't relevant, what is
24 relevant is the fact that there was a Facebook page made
25 that was fake to the Parma Police Department. So, even

1 if it was, if there were positive comments made, it
2 still disrupted the Parma Police Department?

3 MR. MIRANDA: Exactly. I think the same
4 effect could occur even without the negative contents
5 and we would still be here today because it would still
6 have caused that disruption.

7 THE COURT: Okay. And so, even if you
8 looked at the contents of what was posted, is your
9 argument, you have any argument on that, as to the
10 contents of what was posted?

11 MR. MIRANDA: Well, I guess the reason
12 why I'm making this content based restriction is because
13 it affects the review, if the Court agrees with the
14 State it's not a content based regulation, that it
15 doesn't apply strict scrutiny.

16 But, if it does, this is conduct and content
17 mixed, then it would apply strict scrutiny, I think we
18 would pass that test as well.

19 THE COURT: Okay, thank you. Anything
20 further?

21 MR. VICK: No, Your Honor, thank you.

22 THE COURT: All right. So, I'm going
23 to mark it heard and submitted.

24 Now, the State has a motion to allow video
25 testimony. Is there any, I don't know that I've seen

1 any brief in opposition filed.

2 MR. VICK: We have no objection to
3 that, Your Honor.

4 THE COURT: No objection, okay.

5 MR. VICK: No, Your Honor.

6 THE COURT: State's motion is granted.

7 And then I just received notice of intent to use,
8 introduce other acts evidence pursuant to 404(B).

9 Did you see that yet?

10 MR. VICK: I have not. I would like
11 a chance to respond in writing to that motion, please.

12 THE COURT: Okay. Anything further?

13 MR. MIRANDA: Nothing on behalf of the
14 State, Your Honor.

15 MR. VICK: No, nothing, Your Honor.

16 THE COURT: Have there been any plea
17 negotiations in this case?

18 MR. VICK: No.

19 THE COURT: All right. I'll see you
20 next week for trial.

21 (Thereupon Court adjourned.)

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1 FRIDAY MORNING SESSION, AUGUST 5, 2016

2 THE COURT: We can go on the
3 record.

4 We're here today in the case of the
5 State of Ohio vs. Anthony Novak, case number
6 604767. Present in court is the defendant,
7 Anthony Novak, with his counsel, Mr. Vick.
8 And here from the Cuyahoga County Prosecutor's
9 Office is Assistant Cuyahoga County
10 Prosecutor, Mr. Anthony Miranda.

11 We are here today on the State of
12 Ohio's motion for the Court to issue a
13 material witness warrant.

14 Mr. Miranda.

15 MR. MIRANDA: Thank you, your
16 Honor.

17 First chair Assistant Prosecuting
18 Attorney Anna Woods filed a motion for the
19 Court to issue a material witness warrant.
20 She attached to that motion her affidavit
21 indicating that she believes it is necessary
22 to this case for us to obtain a material
23 witness warrant for a representative of
24 Facebook.

25 Obviously the charge in this case

1 revolves around the creation of a fake
2 Facebook account. And we think that a
3 representative's testimony would be important.
4 One, to authenticate the records of the fake
5 page. And two, also to establish whether or
6 not any information was deleted from that page
7 which might help us at trial to establish
8 knowledge.

9 We've presented the Court with a
10 proposed order that would, one, find that the
11 representative is material. And two, would
12 order their appearance either via video, or if
13 they choose to appear personally, the State
14 would arrange for the travel costs.

15 THE COURT: All right. Mr.
16 Vick, on behalf of the defendant.

17 MR. VICK: Thank you. May
18 it please the Court, your Honor.

19 Judge, as this Court has been aware,
20 we've been trying to streamline a lot of the
21 witnesses and testimony and evidence in this
22 case. And I trust that I have enough goodwill
23 with the Court to know, I don't just take
24 unreasonable positions or just object just to
25 object.

1 But with this foreign witness
2 warrant, it's not just, Court grants the
3 order, witness stands in front of a
4 videocamera, video is shown to the jury.
5 First they have to show that it's necessary
6 and material.

7 With respect to it being necessary
8 and material, I was given a proposed entry to
9 stipulate to the admissibility -- excuse me,
10 authenticity and admissibility of these
11 records. I said yes. Okay.

12 Two days later we're now dangerously
13 close to this trial, it's getting under a week
14 of trial, they then tell me -- and you heard
15 the words used by Mr. Miranda -- whether or
16 not there is material that has been deleted.

17 Well, if this material has been
18 deleted, how do I get my hands on it? I don't
19 know what it is. They've never told me if
20 there's deleted stuff or what there's deleted
21 stuff. It's getting dangerously close to an
22 expert, an expert on Facebook, and an expert
23 on how they manage their online accounts.

24 And it is dangerously close to an
25 expert, I have not been given an expert

1 report, I didn't have an ability to determine
2 if stuff was deleted, whether it's material,
3 what was deleted, or whether to hire my own
4 computer forensic analyst expert in this case.

5 With respect to the procedure for
6 this thing, again, we've already offered to
7 admit or stipulate to the authenticity and
8 admissibility. It's not just this Court cuts
9 an order. Okay. Once this Court cuts an
10 order it has to go to -- excuse me if I'm
11 wrong -- I think it's San Mateo County in
12 California. Okay.

13 That Court just doesn't grant this.
14 The Court has to do haul this witness into
15 court, schedule a hearing, okay, to determine
16 whether they think that the witness is
17 necessary and material. It's not a quick
18 process. It's not a painless process for
19 these people out there. There's multiple
20 courts that are going to get involved with
21 this.

22 So we would argue based upon what we
23 have stated that it's not necessary, and it's
24 not material, because we've offered to
25 stipulate to these records. And to the extent

1 that there is stuff in there that's been
2 deleted, the fact that it's been deleted means
3 I don't have it.

4 THE COURT: Well, let me ask
5 this.

6 So what is the need to have a
7 representative if he's going to stipulate to
8 the records?

9 MR. MIRANDA: So, the argument
10 is that there are posts that are in the
11 Facebook records which have been disclosed in
12 discovery, which we argue was deleted but
13 still is within the Facebook records, because
14 we believe Facebook retains deleted
15 information for a period of time, 30 days.

16 THE COURT: So Mr. Vick has
17 seen that?

18 MR. MIRANDA: Correct. There
19 is not information that has not been
20 disclosed.

21 In addition to that, Mr. Vick has in
22 discovery a text message Mr. Novak sent
23 representing that he had been deleting
24 comments which were calling attention to the
25 fact that the Facebook page was fake. So we

1 anticipate a Facebook representative is
2 necessary to establish that even though these
3 comments are in the records, that doesn't mean
4 they weren't deleted.

5 And I don't think that's an expert
6 opinion. We're just asking for someone to
7 testify as to how Facebook works. And if Mr.
8 Vick's prepared to stipulate to that today,
9 there is no need for the material witness
10 warrant, I would agree.

11 Secondly, I would say that it's true
12 that San Mateo would have to have a hearing
13 under the normal course of how things work
14 under this material witness statute. But I
15 talked to the San Mateo County, they indicated
16 that Facebook does not require that step, that
17 they will just honor material witness warrants
18 issued directly from out of -- directly from
19 foreign states, essentially, without that
20 additional step.

21 So really we're just here to
22 determine whether or not this is material to
23 the case. I think it is material to the case
24 because it's going to establish whether or not
25 Mr. Novak was knowingly deleting information

1 and purposely presenting the page to be the
2 official Parma Police page.

3 THE COURT: So are you
4 willing to stipulate to what he has indicated?

5 MR. VICK: To the
6 authenticity and admissibility of these
7 records, yes.

8 THE COURT: But also that
9 there were posts that were posted that you
10 obviously have the records for to see.

11 MR. VICK: Okay.

12 THE COURT: And that they
13 were then deleted.

14 I believe he is saying that if you're
15 willing to stipulate to that, that he wouldn't
16 need a representative.

17 MR. VICK: If I knew what
18 posts were deleted, then we can take a look at
19 them and stipulate that, yes, they were
20 deleted.

21 I mean, how many are we talking
22 about?

23 MR. MIRANDA: Well, we don't
24 know the answer to that.

25 MR. VICK: There's my

1 problem.

2 THE COURT: Why don't you
3 know the answer?

4 MR. MIRANDA: Because, if
5 we're correct under how Facebook works, the
6 records we have contain even deleted posts.
7 So, I don't know that we can determine which
8 ones were deleted or which ones weren't.

9 We're asking that we be allowed to
10 call a representative to testify to the fact
11 that merely because the post is in the records
12 does not mean it wasn't deleted.

13 THE COURT: So you don't
14 have any evidence that you've not turned over
15 to Mr. Vick, right?

16 Is it a matter of interpreting what
17 those records are that you have?

18 MR. MIRANDA: Correct.

19 THE COURT: Okay.

20 MR VICK: I disagree. I
21 disagree, because they're getting into, we
22 have complete Facebook records, but now
23 they're saying that there may be records that
24 have been deleted, but they can't point to
25 those records. So there may be nothing.

1 THE COURT: I don't think
2 that's what he's saying.

3 MR. MIRANDA: Right.

4 MR. VICK: That's exactly
5 what he's saying.

6 MR. MIRANDA: No, I'm saying a
7 post may be deleted from the Facebook page,
8 but still appear in the printout of Facebook
9 records. So a viewer at the time the incident
10 occurred would not see that comment any
11 longer. But it is going to show up in the
12 Facebook records we introduce.

13 MR. VICK: I would
14 stipulate to that.

15 THE COURT: It sounds to me
16 like you -- the records that you have, have
17 all of the posts in them, there is no other
18 posts out there, but what the issue is, that
19 some of those posts that you have were
20 deleted, and that's what the representative
21 would testify to.

22 Is that what you're saying?

23 MR. MIRANDA: Yes.

24 THE COURT: There aren't any
25 posts out there that he's not seen, right?

1 MR. MIRANDA: That's my
2 understanding, correct.

3 And so just, if the stipulation can
4 be clear, Mr. Novak will stipulate that
5 deleted items will still -- will still be
6 represented in Facebook records for up to 30
7 days.

8 MR. VICK: For the record,
9 I don't want this to act as a waiver of
10 attorney/client privilege, I'm just putting
11 consent of my client on the record because it
12 does affect substantive rights and
13 stipulations.

14 I have no problem stipulating to
15 that.

16 THE COURT: Why don't you
17 write out though what the stipulation would be
18 so that we don't have any misunderstanding.

19 MR. MIRANDA: Okay.

20 THE COURT: Or, you know, it
21 gets to be next Wednesday, and their witness
22 isn't here because you agreed to stipulate,
23 but your understanding of the stipulation is
24 not the same as his understanding.

25 So, maybe what you need to do is sit

1 down and write out what you are going to
2 stipulate to, so that that's clear.

3 Because it sounds to me that you'll
4 stipulate, and then when you introduce your
5 records, the stipulation would be something to
6 the effect that there have been posts that are
7 deleted.

8 But would you be able to identify
9 those posts?

10 MR. MIRANDA: I don't think
11 there is any way to identify those posts.

12 THE COURT: Even the
13 Facebook representative, could that person
14 identify the posts?

15 MR. MIRANDA: I would be
16 speculating, but I don't think so.

17 THE COURT: Okay. So, the
18 fact of the matter is, though, that posts were
19 deleted, correct?

20 Is that what you're saying?

21 MR. MIRANDA: That's our
22 understanding based upon text messages that
23 were sent from Mr. Novak.

24 THE COURT: Okay. So maybe
25 what you can do then is sit down and formulate

1 what you want the stipulation to be, so that
2 there is no misunderstanding regarding this
3 deletion of posts and whatever else might be
4 included in your stipulation.

5 MR. MIRANDA: The State is
6 happy to work out the language with opposing
7 counsel.

8 MR. VICK: Mr. Novak is
9 happy to work out language.

10 THE COURT: Okay.

11 Now since we won't be on the record
12 again before Wednesday, is there any -- have
13 there been any plea negotiations in this
14 matter?

15 MR. VICK: No.

16 THE COURT: So the file is
17 not marked to anything?

18 MS. WOODS: Your Honor, at
19 this point -- I'm sorry, Anna Woods, for the
20 record.

21 At this point, I have had discussions
22 with Prosecutor McGinty who is the authorized
23 marker on this file. He is willing to mark
24 the file; however, there has been -- the
25 request from counsel has been for dismissal,

1 which the office is not willing to do.

2 So the mark is to the indictment as
3 it stands.

4 THE COURT: Just so we're
5 clear, the defendant has been indicted in
6 count one, one -- only one count, right?

7 MS. WOODS: This is a
8 one-count indictment, your Honor.

9 THE COURT: Disrupting
10 public service, a felony of the fourth degree.

11 MS. WOODS: That's correct,
12 your Honor.

13 THE COURT: So, right now,
14 there is no plea negotiations; is that
15 correct, Mr. Vick?

16 MR. VICK: That's correct,
17 your Honor, for the reasons we put in our
18 motion. There is a Supreme Court of the
19 United States precedent on this issue. This
20 isn't a crime.

21 THE COURT: Okay. So, all
22 right, that's all I want to know.

23 MR. VICK: I'm not
24 difficult just to be difficult. But I do have
25 to represent my client zealously, and I do

1 feel he has constitutional rights here that
2 are being violated.

3 THE COURT: Okay. All
4 right.

5 So then you understand that you've
6 been indicted under disrupting public service,
7 a felony of the fourth degree, in violation of
8 2909.04(B).

9 Is that right? You understand that,
10 Mr. Novak?

11 THE DEFENDANT: Yes.

12 MR. VICK: Yes, your Honor.

13 THE COURT: And so at this
14 point you are not interested in any plea
15 bargaining; is that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. So you
18 understand that felonies of the fourth degree
19 carry with them a potential prison sentence of
20 anywhere from 6 months to 18 months, and a
21 fine of up to \$5,000?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. All
24 right.

25 So if you two want to just sit down

1 and work out some sort of stipulation, and
2 then if not, let me know then we'll go back on
3 the record.

4 MR. VICK: That's fine.

5 THE COURT: Great. Thank
6 you.

7 MR. MIRANDA: Thank you.

8 MS. WOODS: Thank you, your
9 Honor.

10 - - - -

11 (Thereupon, a recess was had.)

12 - - - -

13 THE COURT: We're back on
14 the record in case number of 604767. Present
15 again in court is the defendant, with his
16 counsel. And here from the State of Ohio, Mr.
17 Miranda.

18 Now the parties have handed to me a
19 stipulation. Would one of you like to read
20 it.

21 MR. VICK: May I approach,
22 your Honor?

23 THE COURT: Sure.

24 MR. VICK: Thank you.

25 For the record, the State of Ohio and

1 counsel for the defendant with defendant's
2 knowledge and consent have negotiated and
3 agreed to the following notice of stipulation:

4 The State of Ohio and counsel for the
5 defendant do stipulate and agree that the
6 records obtained from Facebook are true and
7 accurate copies of the records kept in the
8 ordinary course of business.

9 The State and counsel for the
10 defendant do further agree and stipulate that
11 the records provided are admissible.

12 The State of Ohio and counsel for the
13 defendant do stipulate that Facebook maintains
14 in their records deleted comments and posts
15 for a period of time after deletion.

16 There are two signature lines under
17 this document, one with my name, Gary Vick,
18 Jr., and bar number. I have signed that and
19 that is my signature.

20 There is also another one for first
21 chair Anna Woods, second chair Anthony
22 Miranda. Anna Woods signed that, and both
23 myself and Attorney Miranda were here and
24 witnessed her signature on there.

25 Is that correct?

1 MR. MIRANDA: That's correct,
2 your Honor.

3 MR. VICK: Your Honor, we
4 would propose that the Court accept this
5 jointly negotiated notice of stipulation and
6 stipulation to help with trial.

7 THE COURT: All right. So
8 now as a result of this stipulation, now the
9 parties agree that the State of Ohio's motion
10 for Court to issue a material witness warrant
11 is no longer necessary?

12 MR. MIRANDA: Yes. The State
13 would withdraw the motion or the Court can
14 deny that motion.

15 THE COURT: I'll just mark
16 it as withdrawn.

17 MR. VICK: Of course, no
18 objection.

19 THE COURT: Now, based on
20 that stipulation, though, there will be no
21 issue regarding the State questioning
22 representatives from the police department --
23 and I don't know all the facts of this case,
24 but just the little bit that I do know there
25 is no issue with the State then questioning

1 the representative from the police department
2 who read or saw these posts, right?

3 You don't have any objection to that?

4 MR. VICK: No.

5 THE COURT: Right?

6 MR. MIRANDA: That's my
7 understanding, correct.

8 THE COURT: All right. So
9 just so we don't have any issues.

10 MR. VICK: I would never
11 backdoor the Court like that.

12 THE COURT: Not backdooring
13 me, just to avoid any objections and, you
14 know, what questions are permitted or not.

15 Obviously there may be objections to
16 some of the questions that are asked, and I
17 can't anticipate that because that's for the
18 trial. So those would be dealt with at the
19 time.

20 But just so we understand, you will
21 not have a representative from Facebook, and
22 you're agreeing to the authenticity of those
23 records, so there shouldn't be any issue with
24 someone from the police department testifying
25 as to what's in those entries.

1 MR. VICK: Correct.

2 THE COURT: Is that correct?

3 MR. VICK: That is correct.

4 Yeah, it's a Facebook page. We've
5 got postings and 5,000 pages of comments.

6 THE COURT: Correct.

7 MR. VICK: Of course based
8 upon this I would not make a hearsay objection
9 to those comments. But, if they try to start
10 speculating or putting things out there based
11 upon this or making leaps of faith, I do
12 reserve the right to challenge that.

13 But on hearsay objection, based upon
14 the written words in the documents, of course
15 not. The documents are what they are. They
16 would speak for themselves. The detective can
17 testify to them, that he has knowledge that
18 one was deleted.

19 He can say, post five on page 2,485
20 was deleted on such and such a date. No
21 problem.

22 THE COURT: Okay.

23 MR. VICK: Of course.

24 THE COURT: So anything else
25 that you would like to place on the record?

1 MR. MIRANDA: Nothing on
2 behalf of the State, your Honor.

3 THE COURT: And I'm not
4 saying there shouldn't be objections. I mean,
5 obviously there could be. I don't know what
6 questions will be asked and what manner they
7 will be asked. So there may be objections
8 based on that, and those we'll deal with at
9 the time of trial.

10 But just so we're clear about there
11 not being a representative, and that the
12 police officer will be testifying to what the
13 posts are, and you're not objecting to that?

14 MR. VICK: That's correct.

15 THE COURT: Okay.

16 MR. VICK: One other
17 housekeeping matter.

18 Normally when I've dealt with this in
19 the past -- I don't know what the Court's
20 preference is -- we usually send these back as
21 joint exhibits. We would ask it be sent back
22 as a joint exhibit.

23 MR. MIRANDA: No objection.

24 THE COURT: I don't have an
25 issue with that. That you two can work out.

1 MR. VICK: Correct.

2 THE COURT: All right. So I
3 intend to start Wednesday at 9:00 o'clock.

4 All right.

5 MR. VICK: Very good.

6 THE COURT: Okay, thanks
7 everyone.

8 MR. VICK: Thanks, Judge.

9 MR. MIRANDA: Thank you, your
10 Honor.

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12 (Thereupon, Court was adjourned.)

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1 WEDNESDAY MORNING SESSION, AUGUST 10th, 2016

2 THE COURT: Okay. We are here today in the
3 case of State of Ohio versus Anthony Novak, Case
4 No. 604767. Present in court today is the
5 Defendant, Anthony Novak, with his counsel Mr. Vick.
6 And also present in court is --

7 MR. VICK: Ed Proctor.

8 THE COURT: -- Mr. Proctor, representing the
9 Defendant. Representing the State of Ohio is
10 Assistant County Prosecutor Miss Anna Woods and
11 Mr. Anthony Miranda.

12 This case is set for trial today. Are you
13 prepared to go forward with trial today?

14 MS. WOODS: Yes, Your Honor, the State is
15 prepared to go forward with trial today.

16 THE COURT: And representing the Defendant?

17 MR. VICK: Gary Vick for the Defendant. We
18 are, Your Honor.

19 THE COURT: Okay. So there have been some
20 motions that have already been ruled on. Now,
21 regarding the notice of intent to introduce other
22 acts evidence pursuant to 404(B), okay, on behalf of
23 the State.

24 MS. WOODS: Thank you, Your Honor. The State
25 is seeking to introduce a prior criminal conviction

1 of the Defendant, in which it was a robbery case.
2 In that case it was a shoplifting event; however,
3 upon the shoplifting and being stopped by the
4 off-duty officer, who was in full uniform working at
5 a secondary employment, he began to assault the
6 police officer. The assault was perpetuated by
7 Mr. Novak on the officer, and it didn't just go on
8 for a minute or two, this was a prolonged assault,
9 including a fight over a gun, Your Honor.

10 Case law permits 404(B) evidence to be
11 admitted for motive, bias, not to go to the event,
12 this is an old case, it's still within the time
13 frame of a felony conviction, and it would allow the
14 State to show that this Defendant has a bias against
15 cops, and which would relate back to the Facebook
16 case that is before the Court now.

17 So for that reason, You Honor, and the
18 reasons more fully set forth in the motion, the
19 State would request the admission of the prior
20 conviction for 404(B) evidence.

21 THE COURT: Okay, Mr. Vick.

22 MR. VICK: Thank you, Your Honor. In
23 opposition to the notice of intent to use 404(B)
24 evidence, that robbery conviction is almost nine
25 years ago, it's almost stale, but more importantly,

1 Your Honor, he was convicted of -- he pled guilty to
2 robbery. There's no plea to anything with respect
3 to the gun, there's no plea to anything with respect
4 to the assault on an officer, or any types of
5 further crimes. So you're limited to the robbery
6 case. But I think the evidence rule is very careful
7 to say, and the cases we cited are very careful to
8 say that it is character evidence, and they're using
9 it to assassinate his character because he created a
10 Facebook page. That's what this case is all about.
11 It's a Facebook page.

12 The evidence, if that comes in, all it's
13 going to do is prejudice the jury and they're going
14 to convict him just because of that. He's not going
15 to get a fair trial. There's enough Constitutional
16 issues floating around this case with respect to the
17 First Amendment and his right to do what he did. I
18 don't think we need to confuse the issues or set up
19 any more appellate issues than already potentially
20 exist if we lose this case.

21 Motive is never an element of the crime.
22 Assault is not an element of this crime. Bias
23 against police is not an element of this crime. His
24 intent against the police is not an element in this
25 crime. The elements of this crime is that he

1 intended to use a computer system to intend to
2 disrupt or impair or interfere with the operations
3 of the police.

4 And kind of looking at the cases I cited in
5 our opposition to that, those are cases where
6 someone was on trial, say, for gross sexual
7 imposition or a sex crime against anybody, and what
8 they did is they used 404(B) other acts evidence of
9 other instances either where the guy downloaded
10 child porn or the guy had committed a previous gross
11 sexual imposition against another person or a
12 previous sex crime against another person.

13 And the distinction here is that they want to
14 use this in their case in chief. This isn't with
15 respect to if Anthony decides to take the stand,
16 whether they can impeach him with just the
17 conviction and nothing more. They want to cloud the
18 record with all of these other facts, something that
19 happened when he was 18 years old. And we would
20 submit that all that's going to do and all that's
21 going to serve to do is confuse the jury and make
22 them convict him based upon what he did eight or
23 nine years ago. And we would ask this Court to deny
24 their intention to use other acts evidence.

25 And then kind of for the same argument, not

1 to take up too much time, we would also, under
2 Evidence Rule 609, if Anthony does decide to take
3 the stand, we would ask this Court to hold in limine
4 that that prior conviction does not come in to
5 impeach his credibility, because what the Court has
6 to do is it has to state that he does have a prior
7 conviction, and under 609(A)(2), the Court has to
8 determine in our case in chief, if he does take the
9 stand, that the probative value of that evidence is
10 not outweighed by the danger to confuse, mislead, or
11 prejudice the jury.

12 THE COURT: All right. So regarding -- is
13 there anything further regarding the State's notice
14 to use 404(B) evidence?

15 MS. WOODS: Nothing as it relates to the
16 404(B), but to the motion in limine.

17 THE COURT: Okay.

18 MS. WOODS: If you want us to address that as
19 well, because the issues are kind of intertwined.

20 THE COURT: All right. So regarding the
21 State's notice of intent to introduce other acts
22 evidence, that is denied.

23 Now, regarding the motion in limine, you
24 would like to argue that?

25 You've argued it already.

1 MR. VICK: Yeah. Yeah. I don't want to
2 repeat myself, Judge.

3 MS. WOODS: Your Honor, this is a criminal
4 conviction and, yes, this is a double-edged sword
5 for the Defendant, but it is a criminal conviction,
6 a felony, and it is a choice he would have to weigh
7 that the State could get into his prior criminal
8 conviction if he chooses to take the stand.

9 This has been a test that is used on all
10 witnesses if they have a criminal conviction,
11 regardless if they are for the State or for the
12 Defendant. This is why it's turned over in
13 discovery early on.

14 This Court has had victims come in with
15 criminal histories, and it would go to the
16 truthfulness of the Defendant the same way that it
17 would go towards the truthfulness of any of the
18 State's witnesses. 609 is clear that it is for the
19 crimes accusing of dishonesty of the accused.
20 Robbery is a -- although it is an assault of
21 violence, it is also an offence of dishonesty, he
22 took something from the store, and the assault
23 portion of the robbery was on a police officer.

24 THE COURT: And it's within ten years,
25 correct?

1 MS. WOODS: It is within ten years, Your
2 Honor.

3 MR. VICK: It is.

4 MS. WOODS: It was a 2007 case, I believe, of
5 which he pled in late 2007. So it was a nine-year-
6 old conviction. It is within the time frame.

7 THE COURT: So your motion in limine is
8 denied.

9 MR. VICK: Thank you, Your Honor.

10 THE COURT: So your notice of intent to use
11 other acts evidence is denied. Your motion in
12 limine is denied.

13 Now, obviously, you know, there could be
14 testimony from witnesses where doors are opened and
15 then at that time, then some rulings may be
16 reconsidered.

17 MR. VICK: I completely understand that one,
18 yes.

19 THE COURT: All right. So we are waiting for
20 our jury.

21 MR. VICK: Great.

22 Judge, may I be excused to use the rest room?

23 THE COURT: Yes.

24 MR. VICK: Thank you.

25 - - -

1 (Thereupon, proceedings were resumed within
2 the presence of a jury panel as follows:)

3 - - -

4 THE COURT: Okay. Good morning, ladies and
5 gentlemen.

6 THE JURY PANEL: Good morning.

7 THE COURT: Welcome to Courtroom 20-B. Now
8 that we all are sitting in our correct spots, I am
9 Judge Maureen Clancy, and I will be presiding over
10 the proceedings for which you've all been summoned.

11 You have met my bailiff, Maria, and she is
12 sitting in for my real bailiff, so that's why there
13 was a little bit of confusion this morning in just
14 where you're sitting in your spots today.

15 The first question, in welcoming you to
16 Common Pleas Court and welcoming you to my
17 courtroom, and I always like to ask, is for people
18 to raise their hands if they were so excited to
19 receive a jury summons in the mail for jury duty?

20 THE JURY PANEL: (Indicating.)

21 THE COURT: Okay. So we have a few.

22 * * * * *

23 (Thereupon, voir dire commenced.)

24 - - -
25

1 WEDNESDAY AFTERNOON SESSION, AUGUST 10th, 2016

2 - - -

3 (Thereupon, a jury of 12 plus one
4 alternate was duly selected and sworn in.
5 Proceedings were as follows:)

6 - - -

7 THE COURT: All right. You may be seated.

8 Ladies and gentlemen, at this time I'm going
9 to give you the admonition to a new jury.

10 Members of the jury, it is important that you
11 be fair and attentive throughout this trial. You
12 are not to discuss this case among yourselves or
13 with anyone else, and you are not permitted to have
14 anyone discuss it with you or in your presence, and
15 you are not to form any or express any opinion on
16 this case until it is finally submitted to you. You
17 are not permitted to read or discuss any news media
18 accounts of this case or research any prior media
19 accounts of this case.

20 You are also not permitted to place anything
21 on Facebook, Twitter, Snapchat, Instagram, whatever
22 means that you communicate with the outside world
23 through social media. And you're not permitted to
24 conduct any research. You cannot research anything
25 that you hear about in this courtroom whatsoever.

1 Perhaps most difficult for you to understand
2 is that you may not discuss this case among
3 yourselves until it is finally submitted to you.
4 The jury will receive opening statements, evidence,
5 arguments, and the law in that order, and it would
6 be unfair to discuss this case among yourselves
7 before you receive everything necessary for your
8 decision.

9 You must explain this rule to your family and
10 friends. When the trial is over, you will be
11 released from this instruction and at that time you
12 may discuss the case and your experiences as a
13 juror, but you are not required to do so. So until
14 that moment, please control your natural desire to
15 discuss the case both here and at home. You are not
16 permitted to talk with the attorneys, parties, or
17 witnesses during this trial. Likewise, the
18 participants are not permitted to talk to you. If
19 anyone should attempt to discuss this case with you,
20 you must report the incident immediately to the
21 Court or the bailiff.

22 And, again, I have already instructed you,
23 you are not permitted to conduct any investigation
24 or attempt to obtain any additional information on
25 this case outside of the courtroom.

1 Any violation of these orders may cause a new
2 trial or may require a penalty for disobedience.
3 And I will repeat these admonitions to you at each
4 recess in an abbreviated form, and if overlooked,
5 they apply to your conduct throughout the trial.

6 In the event that you experience a personal
7 problem, you should explain the matter to the
8 bailiff. And, again, if during this trial you
9 cannot hear or understand a witness or a lawyer,
10 please indicate -- please let us know.

11 Also, you are not permitted to take any
12 notes. You are not permitted to ask any questions.
13 And even though we have a court reporter, you are
14 not permitted to have any of the trial transcript
15 read back to you. All right?

16 Okay. So at this time we will start with
17 opening statements.

18 All right. On behalf of the State.

19 MS. WOODS: Thank you, Your Honor.

20 - - -

21 OPENING STATEMENT ON BEHALF OF THE STATE OF OHIO

22 MS. WOODS: May it please the Court. Ladies
23 and gentlemen of the jury, thank you for your
24 attention so far. It's been a long process to get
25 here with a lot of boring questions and things that

1 might not seem relevant, but your attention is
2 greatly appreciated.

3 Ladies and gentlemen, the State is accusing
4 Anthony Novak of creating a fake Facebook page.
5 That Facebook page was titled "The City of Parma
6 Police Department." And you will hear from several
7 people that this website went up, this Facebook page
8 went up and it created disruption in the city.
9 Several residents saw posts about homeless having to
10 be evacuated from the city, or if you fed the
11 homeless you'd be punished by 60 days in jail. New
12 laws were created, new programs were created when
13 they weren't posted by the City of Parma.

14 The City of Parma had to assign a detective
15 and resources were spent trying to find out who was
16 posting on a fake page that was confusing the
17 public.

18 Ladies and gentlemen, after you hear all of
19 the evidence in this case, you will be able to find
20 that the Defendant created the fake Facebook page
21 with the intention to confuse the public and disrupt
22 Parma Police's ability to do their job.

23 Thank you, Your Honor.

24 THE COURT: Oh, thank you.

25 All right. On behalf of the Defendant.

1 MR. VICK: Thank you, Your Honor.

2 - - -

3 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

4 MR. VICK: It's not what the evidence will
5 show, but what the evidence won't show in this case.

6 Ladies and gentlemen, again, Gary Vick, on
7 behalf of Anthony Novak. And we, too, would like to
8 thank you. Thank you for sitting here and being
9 attentive and listening to our story. Okay.

10 And, again, I want to reiterate, it's not
11 what the evidence will show, but it's going to be
12 what the evidence is not going to show. Okay.

13 This is a case about a fake Facebook page.
14 Big shock, now that you've heard it, right, we've
15 been talking about it for four hours.

16 Back on March 1st and 2nd, Anthony created a
17 fake Facebook page. He was sitting at the bus stop
18 waiting to go home from work. He doesn't drive. He
19 pulled his cell phone out and made a fake Facebook
20 page. He pretended to be the Parma Police
21 Department. Okay. He used a photograph from the
22 Parma Police Department's Facebook page. The pages
23 were not identical. And the evidence is going to
24 show that there were very subtle differences between
25 the two pages.

1 The evidence is also going to show that this
2 Facebook page was geared towards and meant for his
3 small circle of friends. Okay. Once the page was
4 created, he linked it to his personal Facebook page.
5 All of his goofy friends, Look at what I did.

6 What I want to talk to you about is the posts
7 that Anthony put on there, because you heard about
8 one of them, that Anthony allegedly created a fake
9 law. Okay. The first post was a post that it was
10 now unlawful in the City of Parma to feed the
11 homeless or to give the homeless shelter. The post
12 went on to say that anyone who was found giving the
13 homeless shelter or feeding the homeless would be
14 sent to jail for 60 days, and then it said, Be
15 advised.

16 That post then was up for a few hours, and a
17 second post went up. The second post was -- and
18 there's six of them, so bear with me. The evidence
19 is going to show that one of the next posts that
20 went up was that the City of Parma was conducting a
21 civil service exam for people that wanted to be
22 police officers. One of the tests was going to be a
23 hearing test, it was only 15 minutes long, and if
24 you passed the test, you were a cop.

25 Okay. Post number three, and this is where

1 it may get a little offensive. The evidence is
2 going to show that, thanks to Anthony, the City of
3 Parma would now be hosting a pedophile reform event
4 at a Catholic church. The post went on to say that
5 all the pedophiles can come and the Parma Police
6 will give them a little test, and they're going to
7 focus on 'no means no,' and once you pass the test,
8 you're no longer a pedophile, welcome to the police
9 force.

10 The next post that went up is going to be a
11 post where Anthony said that the Parma Police
12 Department were giving all teenage girls, with no
13 parental permission needed, free abortions out of
14 the back of a van.

15 One of the next posts was a picture of an
16 armed robbery occurring in Parma -- comedy is
17 offensive to some, it's a personal choice -- with an
18 African American woman standing in front of a store.
19 And the post will -- the evidence will show that the
20 post said, We forgot to tell you that the Speedway,
21 or the Subway was robbed. Don't worry about that.
22 There was an African American woman loitering,
23 that's who we want.

24 Those were the posts that went up on the fake
25 Facebook page. That's what the evidence will show.

1 Okay. The evidence is also going to show that
2 Anthony is not a sportsman. Anthony is not a chess
3 player. Anthony is not a classically trained
4 intellectual. Okay. Anthony has a job, and he
5 makes fake Facebook pages. That's what he enjoys
6 doing. That's how he has fun.

7 What the evidence is never going to show is
8 that Anthony had any intention to disrupt anything.
9 None. And what the evidence is not going to show is
10 that anything was disrupted.

11 On March 2nd, Anthony is texting back and
12 forth with his friends. And Anthony catches wind
13 that, oh-oh, I'm on the news. And apparently he
14 catches wind that the Parma Police Department issued
15 a statement on their website that there's this fake
16 website going around and everyone should ignore it.
17 And he put it on the fake Facebook page.

18 The evidence is also going to show that the
19 page was taken down. Anthony took it down. Okay.
20 The joke was getting out of hand. Okay. People
21 were taking this absurd Facebook page seriously, and
22 he took it down.

23 As a result of the fake Facebook page with
24 the six absurd posts that were up, the evidence is
25 going to show that the City of Parma Police took

1 great offense at the content of those posts.

2 Nothing was disrupted. They hated what was in the
3 posts.

4 The evidence is also going to show that they
5 arrested him, put him in handcuffs, threw him in the
6 back of the car, for a Facebook page, and took him
7 to jail. Then they started executing search
8 warrants, not one, but two. They executed a search
9 warrant at his house where he and his roommate live.
10 Okay. This was after they executed a search warrant
11 to Facebook and Facebook returned about 4,000 pages
12 of documents, giving them the entire Facebook pages,
13 but they had to go to the house and take out every
14 single computer.

15 The evidence is going to show they took out
16 every single cell phone. The evidence is going to
17 show they took out every single thumb drive. The
18 evidence is going to show that they took out any
19 type of electronic they could get their hands on.
20 The evidence is going to show -- oh, I'm sorry. The
21 Xbox and the Play Station, because those had to go,
22 too, because there somehow was going to be evidence
23 of a crime in an Xbox and a Play Station.

24 The evidence is going to show that in about a
25 12-hour time period dispatch had to field eleven

1 whole calls on this thing. The total amount of time
2 that it took dispatch to deal with the eleven calls
3 was under 12 minutes. And I submit to you that
4 that's what's going to be the disruption, eleven
5 calls, 12 minutes, in 12 hours for dispatch to do
6 what dispatch does.

7 What you are not going to hear is any
8 evidence that the posts incited violence; that they
9 urged anyone to call the police. There's going to
10 be no evidence that the police's website was hacked,
11 that their Facebook was hacked, that their security
12 systems went down, that anything in the City of
13 Parma was harmed by either Anthony Novak or his
14 Facebook page. Nothing. Yet, they want you to find
15 him guilty that he disrupted public services.

16 There's a lot at the end of the case that the
17 evidence is going to show in this case, and, again,
18 there's a lot that the evidence is not going to
19 show. And at the end of the day when the evidence
20 is all in, we're going to sincerely ask, after
21 Anthony gets done fighting, that you find him not
22 guilty. Thank you.

23 THE COURT: All right. Thank you.

24 You may call your first witness.

25 MS. WOODS: Thank you, Your Honor. The State

1 of Ohio calls Lieutenant Riley.

2 THE COURT: I will swear you in.

3 Thereupon, the STATE OF OHIO, to
4 maintain the issues on its part
5 to be maintained, called as a
6 witness, KEVIN RILEY, who, being
7 first duly sworn, was examined
8 and testified as follows:

9 THE COURT: You may have a seat. And just
10 make sure you speak loudly and clearly and into the
11 microphone.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Thank you.

14 Okay, Mr. Miranda.

15 - - -

16 DIRECT EXAMINATION OF KEVIN RILEY

17 BY MR. MIRANDA:

18 Q. All right. Can you state your name for the record.

19 A. Kevin Riley, R-i-l-e-y.

20 Q. And where are you employed?

21 A. Parma Police Department.

22 Q. And how long have you been with Parma?

23 A. I have been with the Parma Police Department for
24 18 years.

25 Q. And were you employed before the Parma Police

1 Department?

2 A. Yes.

3 Q. And how long have you been employed as a police
4 officer?

5 A. I've been involved with law enforcement for 27 years.

6 Q. And what's your current title with the Parma Police
7 Department?

8 A. I am currently a lieutenant assigned to the detective
9 bureau. I am the public information officer and
10 spokesperson for the police department.

11 Q. So one of your responsibilities as a lieutenant is to
12 supervise the detective bureau?

13 A. That is correct.

14 Q. And how big is that bureau?

15 A. We have 15 detectives, three supervisors. I supervise
16 14 -- well, 13 people total.

17 Q. Okay. And you said you're also -- another hat you wear
18 is public information officer?

19 A. That is correct.

20 Q. And so what do you do as part of that position?

21 A. As the public information officer, it is my job to
22 respond to inquiries from the news media, prepare news
23 releases, put information out to the public through the news
24 media.

25 Q. And is there any method of communication that you use

1 to communicate with the public or the news media?

2 A. We use primarily forms of news release that we send out
3 via email, we also use a Facebook page by the Parma Police
4 Department and a Twitter page as well.

5 Q. Okay. So as public information officer you sort of
6 supervise the use of that Facebook page?

7 A. That is correct.

8 Q. Are there people within the bureau that also have
9 access to it?

10 A. Yes. I have -- when I became the public information
11 officer in July of 2013, there were two detectives already
12 assigned by the previous administration to be the official
13 posters, so-to-speak, for the Facebook page; so when I took
14 over that position, I saw no need to make any changes
15 whatsoever. So I kept the same two detectives on to make
16 the postings on there. They just have to get authority or
17 permission from myself before they put something on there.

18 Q. And who are those detectives?

19 A. It would be Detective Jeff Wells and Detective Amanda
20 Kaniecki; she spells it K-a-n-i-e-c-k-i.

21 Q. So if someone is to use the Parma Facebook Police page,
22 it would be yourself, Detective Wells or Detective Kaniecki.

23 A. Correct. If there's a request to put something on the
24 Facebook page, it would go -- generally, people would either
25 ask Detective Wells or Detective Kaniecki or myself and then

1 they would come to me and say, is it okay if we put this
2 information on the Facebook page, and I would tell them yes
3 or no, and then they would go ahead and put that posting on
4 there.

5 Q. All right. Lieutenant, how do you use the Parma Police
6 Facebook page?

7 A. We use our Facebook page -- we don't really have a
8 policy on how we exactly use it, but the main purpose for
9 using it is just to give the public information on wanted
10 persons, solicit tips, you know, on say an unsolved robbery,
11 unsolved homicide, or something like that. We don't really
12 use it for a lot of other things right now because we're
13 still -- you know, just because of the manpower issue in our
14 department, but generally we use it to alert the public, you
15 know, solicit tips and alert the public when we have
16 emergencies and things like that.

17 Q. So when you say solicit tips, how might you solicit
18 information?

19 A. We also maintain a crime tip line which comes in,
20 people can call in phone tips, they can also email. So what
21 will happen is, say we get an armed robbery at a local
22 business and there's surveillance video, we'll post that on
23 there and ask the public for help in helping us identify who
24 that person is, and we'll post a clip of the surveillance
25 video or photograph of the person, whoever we're looking

1 for, and we'll post it on there with a phone number that
2 they can call and leave a tip.

3 Q. And do you know, has that resulted in tips before, the
4 use of that Facebook account?

5 A. Yes. Yes, it has.

6 Q. Did there come a time when you were aware of a fake or
7 imposter Facebook account?

8 A. Yes, I do.

9 Q. And do you recall when that was?

10 A. It would have been on March 2nd, 2016.

11 Q. And do you recall how you became aware of it?

12 A. I came into work that morning and I believe my
13 supervisor came into my office and told me he had received a
14 phone call from our dispatch center indicating that they
15 were receiving numerous phone calls from people asking about
16 information that was posted on our Facebook page that seemed
17 a little bit controversial and strange.

18 Q. And, Lieutenant, did you ever view the fake page?

19 A. I did.

20 Q. Okay.

21 MR. MIRANDA: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 Q. Showing you what's been marked as State's Exhibit 10,
25 can you identify that exhibit?

1 A. This is a side-by-side photograph of what our real
2 Facebook page looks like, and then in the photograph next to
3 it here would have been the fake Facebook page that I
4 observed on March 2nd, 2016.

5 Q. So there are two images in Exhibit 10, one the fake
6 page and one the real page?

7 A. That is correct.

8 Q. And the exhibit that you have in front of you, is that
9 the same exhibit or image that you see in a moment here on
10 our large screen?

11 A. That is correct.

12 Q. Okay. So can you describe in more detail what's
13 depicted in this image? What is this a snapshot of?

14 A. This is a snapshot of exactly what I'm looking at right
15 here. The left side would be what our Facebook page looked
16 like on March 2nd, 2016. It says Parma Police Department,
17 and it has our patch, it has an image of our detective's
18 badge, and it says City of Parma Police Department, it says
19 Police Station - Government Organization. On the right you
20 see an identical image, Parma Police Department, our patch,
21 a badge, City of Parma Police Department and Community.

22 I should note, though, that on March 2nd when I
23 observed this originally, what would have been on the right,
24 the fake Facebook page, actually said The City of Parma
25 Police Department, because I believe that is what I put in

1 my first news release that I put out to the news media that
2 day.

3 Q. Just so I can understand, the background image with the
4 words Parma Police Department, those are similar you're
5 saying?

6 A. They look exact.

7 Q. And the profile picture, those are similar as well?

8 A. Yes.

9 Q. Okay. And so you were saying the header of the
10 Facebook page may have changed since March 2nd on the fake
11 page with the deletion --

12 A. That is correct.

13 Q. Sorry to interrupt.

14 -- with the deletion of the word "The"?

15 A. Yes.

16 Q. So the fake page one said The City?

17 A. That is correct.

18 Q. So other than that -- okay, so that's Exhibit 10. And
19 is the exhibit I have handed you, is that a true and
20 accurate depiction, with the caveat that the article "The"
21 had been removed?

22 A. Yes.

23 Q. So you become -- on March 2nd you become aware of this
24 fake page. What is the concern for Parma Police at that
25 point?

1 A. At that point, after discussion with my supervisor,
2 there were several concerns. There were two postings I
3 recall that had racially inflammatory information on them,
4 and there were three other postings on there that had, what
5 I would consider, socially contentious issues.

6 My concern at that point, in viewing these postings,
7 coupled with the fact that dispatch was receiving phone
8 calls from people asking about this, and some people even
9 believing some of what was said on there, my concern was
10 two-fold. One, I was concerned that we would get either
11 protesters showing up at the police department and either
12 causing physical harm, attempting physical harm to the
13 department, or causing disturbances at the police station.
14 And my second concern was for the locations that were
15 specified in two of the postings. One was 7400 Broadview
16 Road, it's a Giant Eagle in Parma, and the other one was
17 St. Anthony's of Padua Church on State Road. I was
18 concerned that people may show up there and cause a
19 disturbance.

20 So at that point the priority came to get this
21 Facebook page removed and taken down as soon as possible.

22 Q. So, Lieutenant, I just want to make sure I understand
23 what you're saying. Your concern was with the result of
24 this fake page, or was your concern with the criticism
25 within the fake page of the Parma Police?

1 A. At that point, not as much as just a public safety
2 issue and the safety of our officers.

3 Q. Okay. And you had indicated that you learned at that
4 time that people were calling in to the Parma Police
5 Department?

6 A. Yes.

7 Q. Okay. So what action did you take upon learning this
8 information from your supervisors?

9 A. I contacted Detective Connor, asked him to look into
10 it, assigned the case to him, so he would begin
11 investigating it, and that would involve him, you know,
12 reaching out to our law department and beginning his
13 investigation. And then after that, I sent out a generated
14 news release. I sent that out to all the major news outlets
15 here in the greater Cleveland area and waited for response
16 from the news media to see if anybody would come out and do
17 a story on this.

18 Q. So you assigned a detective?

19 A. That is correct.

20 Q. And what was the purpose of assigning a detective?

21 A. The purpose of assigning a detective was to, one,
22 contact, reach out to Facebook and see if they would remove
23 this as soon as possible; and secondly, contact the law
24 department and determine if this was going to be, if they
25 believed that this would be a criminal act or not.

1 Q. Okay. And then you said, second, you had drafted a
2 news release?

3 A. That is correct.

4 Q. And then you disseminated the news release?

5 A. Yes, I did.

6 Q. And then did you do any other further contact with the
7 media regarding the fake post?

8 A. That afternoon I was contacted by a reporter from Fox 8
9 and I did an on-camera interview with them that evening in
10 reference to the fake Facebook page.

11 MR. MIRANDA: Can I have a moment, Your
12 Honor?

13 THE COURT: You may.

14 MR. MIRANDA: Nothing further.

15 THE COURT: All right. Thank you.

16 Cross-examination.

17 MR. VICK: Thank you.

18 - - -

19 CROSS-EXAMINATION OF KEVIN RILEY

20 BY MR. VICK:

21 Q. Hello, Lieutenant.

22 A. Hello, sir.

23 Q. How are you?

24 A. Doing well. How about yourself?

25 Q. Fine. Thank you.

1 Lieutenant, there were differences between the two
2 websites though, correct?

3 A. The first time I observed it -- you're talking about
4 the header right here?

5 Q. Correct.

6 A. Yes, there was a difference.

7 Q. And it was something with the word "The", right?

8 A. That's correct.

9 Q. And this is your official Facebook page picture?

10 A. Yes, sir.

11 Q. And it says Police Station - Government Organization,
12 correct?

13 A. Yes.

14 Q. I think, it's real blurry.

15 And this is Anthony's page?

16 A. Yes, sir.

17 Q. And his lists Community, correct?

18 A. Yes.

19 Q. It doesn't list Police Station?

20 A. That is correct.

21 Q. Or Government Organization?

22 A. Correct.

23 Q. And are you aware there was also something posted on
24 Anthony's page, the statement, We No Crime?

25 A. I'm not aware of that, sir.

1 Q. Did you review Anthony's page?

2 A. I don't recall that particular thing you just said.

3 Q. Maybe it would jog your memory if it was We, w-e, No,
4 n-o, Crime, instead of the proper spelling of the know?

5 A. I'm sorry, I don't recall that.

6 Q. That's fine. Thanks, Lieutenant.

7 You stated in your direct examination that you were
8 concerned for your officers and for really the Giant Eagle
9 and the St. Anthony Church, right?

10 A. Yes, sir.

11 Q. Did you review the eleven dispatch calls that came in?

12 A. I've listened to some of them, but that particular day
13 we more or less wanted to get the information out to the
14 news media and to have Detective Connor get in touch with
15 Facebook to get this page taken down.

16 Q. And that's great, but that's not responsive to my
17 question. Did you listen to the dispatch tapes on that day?

18 A. I listened to some of them, yes.

19 Q. And you're a trained officer, correct?

20 A. Yes.

21 Q. And had grave concern for your officers in these
22 locations, correct?

23 A. Yes.

24 Q. And you're aware that about half of the phone calls
25 that came in knew that this site was fake?

1 A. Yes, some of them did know right away that it was fake.
2 They were advising us that the page was fake.

3 Q. Correct. Because nobody really reasonably thinks that
4 the police are going to perform abortions in that parking
5 lot, correct, Lieutenant?

6 A. I would hope so.

7 Q. Right, you would hope so.

8 And nobody really thinks that the police are going
9 to reform pedophiles at St. Anthony's Church?

10 A. I'm sorry. Can you repeat your question, please?

11 (Short interruption, fire alarm went off)

12 THE COURT: That's okay.

13 Q. Nobody really thinks that you guys were reforming
14 pedophiles in the Catholic church, right?

15 A. Again, you would certainly hope so.

16 Q. Yeah, I know.

17 You understand I have a job to do, I have to
18 represent my client, right, Lieutenant?

19 A. Yes, sir.

20 Q. And we know each other, right?

21 A. Yes, sir.

22 Q. Anybody show up at Giant Eagle?

23 A. Not that I know of.

24 Q. Did anybody show up at the church saying, Hey, I'm a
25 pedophile, let me take the 'no means no' test and I can

1 become a police officer?

2 A. Not that I'm aware of.

3 Q. Any police officers get hurt because of the Facebook
4 page?

5 A. I don't believe so.

6 Q. And your internal computer systems were never altered,
7 correct?

8 A. No.

9 Q. They were always intact, correct?

10 A. Yes.

11 Q. Functioned appropriately, right?

12 A. Yes.

13 Q. The real Facebook page, there's no allegations that
14 Anthony hacked that page, is there?

15 A. I'm sorry, what was that?

16 Q. Maybe that was a bad question. I'm sorry.

17 There's no allegations with respect to your Facebook
18 page that Anthony hacked or went into your Facebook page?

19 A. I don't believe that our actual Facebook page was
20 tampered with on that particular day.

21 Q. Right. Anthony didn't put anything on the real page,
22 right?

23 A. No.

24 Q. And you have security systems in the police department,
25 correct?

1 A. Yes.

2 Q. Especially in the jail?

3 A. Yes.

4 Q. Those were always functional during March 1st to March
5 3rd, correct?

6 A. Yes.

7 Q. Was 9-1-1 ever disabled?

8 A. No.

9 Q. And Anthony never used his Facebook page to tell
10 people, Hey, start flooding the police department with
11 telephone calls, right?

12 A. I don't believe there's any postings on that fake
13 Facebook page relative to what you just stated.

14 Q. Right, not on the fake page. Right.

15 There were no threats in those posts against any
16 Parma Police officer, correct?

17 A. No.

18 Q. And -- again, I grew up in Parma, okay. So when you
19 say racially sensitive information, Parma has a history of
20 being racially insensitive, whether right or wrong, correct?

21 A. Yes.

22 Q. Yeah. And you know, based upon all your training and
23 experience and education classes, it's not a crime to poke
24 fun at a police officer, is it?

25 A. No.

1 MR. VICK: May I approach, Your Honor?

2 THE COURT: You may.

3 MR. VICK: Thank you.

4 BY MR. VICK:

5 Q. Lieutenant, can you take a moment to look at that
6 document.

7 A. Okay.

8 Q. Is this the press release you issued?

9 A. This is the second press release I issued.

10 Q. I apologize. The second press release, right?

11 A. Yes.

12 Q. This is the one that you sent out to all the media?

13 A. This is the one I sent out to all the media after
14 Mr. Novak was arrested.

15 Q. And contained within the body of this press release is
16 that Novak created a fake Facebook page, correct?

17 A. Yes.

18 Q. No secret, everybody knows that. And you state that it
19 was set up in a manner that was similar to the Department's
20 official Facebook page, correct?

21 A. That's what I wrote, yes.

22 Q. Yeah, you don't state that it was identical or exactly
23 the same as your Facebook page, correct?

24 A. Correct.

25 Q. And then you state that after creating the page he

1 posted derogatory and inflammatory information that
2 purported to be from the Parma Police Department; is that
3 correct?

4 A. Yes.

5 Q. And that's really what you thought, right, that's why
6 you put it in the press release?

7 A. Yes.

8 Q. Okay. When you say derogatory and inflammatory
9 information, you're talking about the posts that he wrote,
10 right?

11 A. That is correct.

12 Q. And there were -- I want to be correct -- six posts,
13 but there were ultimately seven posts, because he took one
14 of yours warning the public about his page and put it on his
15 page.

16 A. Okay.

17 Q. Right?

18 A. I believe so.

19 Q. Okay. But all of those posts were written words with a
20 computer, or a cell phone, correct?

21 A. I'm sorry. Could you --

22 Q. Strike that. Horrible question.

23 All of those six posts were placed on his fake
24 Facebook page?

25 A. Yes.

1 Q. And they were words, words were used to comprise those
2 posts, correct?

3 A. They were mostly words. I think one of the posts may
4 have had a picture, some photographs.

5 Q. A couple of them?

6 A. A couple had photographs on them.

7 Q. There were a couple pictures on them.

8 Can you point to me --

9 MR. VICK: And I apologize for the record. I
10 handed the Lieutenant what's been previously marked
11 as Defendant's Exhibit F. And it was a press
12 release for immediate release on March 25th of 2016.

13 THE COURT: Okay. You have to talk a little
14 bit more slowly.

15 MR. VICK: Thank you.

16 BY MR. VICK:

17 Q. Lieutenant, is this a true and accurate copy of the
18 press release that you issued?

19 A. Yes, sir.

20 Q. And is that press release, is that how it would be kept
21 in the normal and ordinary course of business in the Parma
22 Police Department?

23 A. Yes, sir.

24 THE COURT: I'm sorry. Was that Defendant's
25 Exhibit F?

1 MR. VICK: Yes, Your Honor.

2 Q. And the date of this is on March 25th, correct,
3 Lieutenant?

4 A. Yes, sir.

5 Q. From the time of March 2nd until March 25th, you had
6 conversations with Detective Connor, right?

7 A. I'm sure I did.

8 Q. And you put Detective Connor on the case; is that
9 correct?

10 A. That is correct.

11 Q. Was that your decision?

12 A. Yes.

13 Q. And just so we're clear, with the actual respect of
14 charging Anthony, that came from the law department though,
15 correct?

16 A. That is correct.

17 Q. Yeah. In Defendant's Exhibit F can you point out in
18 your news release to the media each and every function of
19 your department that was disrupted?

20 A. You know, other than attempting to confuse people with
21 the actual Facebook page that we have in our department and
22 the fake Facebook page there's nothing else listed on here.

23 Q. Are you aware of the statute that you indicted him on?

24 A. Yes.

25 Q. Confusing the public is not part of that, correct?

1 A. I would have to look at the statute in front of me. I
2 don't --

3 Q. Fair enough.

4 A. I don't know it verbatim, so -- I'm sorry.

5 Q. You also made comment to, I think, Cleveland.com or a
6 couple other media outlets, verbal comments, are you aware
7 of that?

8 A. I spoke with a reporter from Cleveland.com and I spoke
9 to Melissa Reid from Channel 8.

10 Q. And the same information that you gave them was roughly
11 the same information in the press release that the content
12 and the information that Anthony posted was inflammatory and
13 derogatory, correct?

14 A. Yes.

15 Q. And you felt that you were cognizant of his First
16 Amendment right, but you felt he went too far?

17 A. That's correct, I believe he did.

18 Q. How many classes on the First Amendment have you taken?

19 A. In the police academy there's some brief discussions in
20 there, but nothing formal, nothing like what you would have
21 had in law school.

22 Q. Thanks, Lieutenant.

23 How long ago were you in the police academy?

24 A. 1993 and 1997.

25 Q. Did you participate in the execution of the search

1 warrant?

2 A. No, sir.

3 Q. Did any protesters show up at the police department?

4 A. I don't believe so.

5 Q. Didn't shut down a driveway or anything?

6 A. No.

7 MR. VICK: May I have one moment, Your Honor,
8 please?

9 THE COURT: You may.

10 MR. VICK: Thank you. No further questions,
11 Your Honor.

12 THE COURT: Okay. Thank you.

13 Redirect.

14 MR. MIRANDA: Thank you, Your Honor.

15 - - -

16 REDIRECT EXAMINATION OF KEVIN RILEY

17 BY MR. MIRANDA:

18 Q. Lieutenant, if you know, did everyone who called the
19 Parma Police about this fake page, did everyone know it was
20 fake?

21 A. I think some people thought it could have been real.

22 Q. Okay. So -- and you didn't listen to every call,
23 correct?

24 A. I didn't listen to each and every call. I listened to
25 some of them that day.

1 Q. And I think I heard you say to Mr. Vick that
2 criticizing the police is not a crime; did I understand that
3 right?

4 A. Yes.

5 Q. So you've been an officer for 28 years?

6 A. Yes, 27 years.

7 Q. Have you been criticized before?

8 A. Yes.

9 Q. Okay. And you haven't arrested people just for
10 criticizing?

11 A. No.

12 Q. But you said that you were worried about this
13 particular post because it was inflammatory; is that right?

14 A. Yes.

15 Q. So why was this post different than just the criticism
16 you expect as a police officer?

17 A. Well, there were several posts that we were worried
18 about in particular, just because of the, you know, the
19 racial sensitivity of -- Mr. Vick mentioned about Parma, and
20 we didn't want people thinking that this stuff was being put
21 out by the Parma Police Department, because, like I said, it
22 looked like it possibly could have been coming from the
23 department, as I stated in the news release. And that was
24 the concern, we just wanted it down. And then we were
25 concerned for the places where these, the two events said

1 that they were going to be held, one was at a Giant Eagle
2 and one was at St. Anthony's Church.

3 Q. Lieutenant, if I am understanding your answer, you
4 think this is different because this is being done in the
5 name of the Parma Police; is that right?

6 A. That's correct. I believe that this page was set up to
7 mimic and impersonate the Parma Police Department's page to
8 look almost identical to it.

9 Q. And you were worried because if people thought that it
10 was coming from a real page it could lead to an event
11 requiring police response?

12 MR. VICK: Objection, Your Honor.

13 THE COURT: It's overruled.

14 A. We were worried that people were going to look at this
15 fake Facebook page and confuse it with the real Parma Police
16 Department Facebook page and either take action against the
17 police department or take action at the locations where
18 these events said that they were going to be held.

19 Q. And why would that be a problem?

20 A. Well, like I said earlier, two of the postings I felt
21 were racially inflammatory, and three of the postings I felt
22 dealt with socially contentious issues and we were just
23 concerned for public safety and the safety of our police
24 department.

25 Q. Lieutenant, I guess my question is, why would it be a

1 problem that people would gather, say, at Giant Eagle?

2 A. I think the event at Giant Eagle was for the fund
3 raiser or something for teen abortions and, you know, if we
4 have anti-abortion groups showing up at Giant Eagle or
5 protesting outside of Giant Eagle, we were just concerned
6 about the potential for physical harm that could occur or
7 the potential harm that could happen to our officers because
8 of these postings. I was concerned that there would be
9 people that would see that and, yeah, though the majority
10 may believe that and know that it's fake, there would be
11 some people that may see that and believe it's real and take
12 action based on that.

13 MR. MIRANDA: Nothing further, Your Honor.

14 THE COURT: Okay. Thank you.

15 Recross?

16 MR. VICK: No, nothing further, Your Honor.

17 Thank you.

18 THE COURT: All right. Detective -- or
19 Lieutenant, you may step down.

20 - - -

21 (Thereupon, the witness was excused.)

22 - - -

23 THE COURT: All right. Will the lawyers
24 approach for a minute.

25 - - -

1 (Thereupon, a discussion was had between
2 Court and Counsel at sidebar outside the
3 hearing of the jury and off the record.)

4 - - -

5 THE COURT: All right. Ladies and gentlemen,
6 this will conclude our session for this evening.

7 Again, you are not to discuss this case
8 amongst yourselves. You are not permitted to
9 discuss it with anyone, or permit anyone to discuss
10 it in your presence. You are not permitted to form
11 or express an opinion on this until it is finally
12 submitted to you. In addition, you are not
13 permitted to read any articles or any media accounts
14 of this case as well. You are not permitted to post
15 anything on Twitter, Facebook, SnapChat, Instagram,
16 whatever means that you use to communicate with the
17 outside world through social media. And you are not
18 permitted to conduct any research of your own about
19 this case. And you are not permitted to read the
20 newspaper or anything like that. Is that clear?

21 THE JURY: Yes.

22 THE COURT: Okay. All right. So I hope you
23 have a really great evening tonight. And we are
24 going to start at 9 o'clock tomorrow. So if I can
25 have you here reporting to the fourth floor at like

1 ten to 9, and I will have you up as close to
2 9 o'clock as possible.

3 Now, tomorrow I would like to see if we could
4 go a little later. Would 5:30 be okay?

5 THE JURY: Yes.

6 THE COURT: And I'm anticipating that we may
7 not be in session on Friday. That's why we can go a
8 little longer tomorrow, and you may have Friday off.
9 I'll let you know for sure tomorrow. And that means
10 that we would come back Monday to continue with the
11 trial. All right?

12 So just so you sort of know what our schedule
13 may be. All right. So 5:30 tomorrow would be okay?

14 THE JURY: Yes.

15 THE COURT: And raise your hand and let me
16 know when you need a break. We will be taking a
17 break in the morning, and we will take a break in
18 the afternoon, and probably a little sooner than we
19 did today. All right?

20 And I do permit you to have any beverages
21 with you in the courtroom. You may bring those in
22 with you as well. All right. I hope you have a
23 great night, and I will see you tomorrow.

24 All rise for the jury. You can head on out.
25 Have a good night.

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(Thereupon, the jury was excused from the courtroom and the following was held:)

— — —

THE COURT: The only issue we need to put on the record is with regard to cause with the one juror.

MS. WOODS: That's correct.

THE COURT: Would you like to make your argument?

MS. WOODS: Thank you, Your Honor. As it relates to initial Juror No. 11, who was excluded by a peremptory challenge, the State moved to have her excused for cause. She was a social media expert who had done, had worked for Channel 19 and had a hand in the reporting of the story. She was the one who designed the layout of the page and then posted the story. She was familiar with the posts on the page and had formed an opinion. For that reason the State asked to have her removed for cause.

THE COURT: Thank you. Mr. Vick?

MR. VICK: Thank you, Your Honor. The Defendant, we put forth an argument that upon adequate questioning she stated that she could be fair and impartial and unbiased, and that that would

1 not affect her ability to sit. Thank you.

2 THE COURT: Okay. And so my ruling is that
3 she was not going to be removed for cause, and then
4 the State exercised their peremptory challenge.
5 Okay.

6 Anything else we need to put on the record?

7 MR. VICK: No.

8 MS. WOODS: No.

9 THE COURT: Okay. Thanks everyone. We will
10 see you tomorrow.

11 MR. MIRANDA: Thank you.

12 THE COURT: Now, do the lawyers want to just
13 come up for a second. We're done, Peggy.

14 - - -

15 (Thereupon, proceedings were
16 adjourned until 9:00 a.m., on
17 Thursday, August 11th, 2016, at
18 which time the following
19 proceedings were had:)

20 - - -

21

22

23 THURSDAY MORNING SESSION, AUGUST 11th, 2016

24 THE COURT: Okay.

25 MS. WOODS: Your Honor, there's a stipulation

1 between the parties that the dispatch calls are
2 authentic and admissible. The calls were taken by
3 several dispatchers and they're recorded in the
4 ordinary course of business. Detective Connor
5 listened to all the calls received and, as noted,
6 it's signed by all parties.

7 MR. VICK: That is accurate, Your Honor.

8 THE COURT: So what you want to do, and I
9 will leave it up to you, is you'll notice in the
10 instructions there's a section for stipulations, so
11 if you would like to read it into the record prior
12 to the jury going to deliberate, you may, or if you
13 want me to read it.

14 MS. WOODS: I think both parties agree that
15 it should come from you.

16 MR. VICK: All the instructions are coming
17 from you.

18 THE COURT: Well, I'll do it either way. It
19 doesn't matter to me. So what I'll do then is I'll
20 have my secretary write that stipulation into the
21 written version.

22 MS. WOODS: The same with the Facebook
23 records.

24 THE COURT: Do you want to read that one in
25 the record as well?

1 MS. WOODS: Yes, Your Honor.

2 THE COURT: Is that one lengthy?

3 MR. VICK: No, I think it is two paragraphs.

4 THE COURT: Okay.

5 MR. VICK: I believe you have the signed
6 copies as well.

7 THE COURT: I do.

8 MR. VICK: Correct.

9 THE COURT: Why don't we do that one at --
10 we'll do that one before we take a break. Okay.

11 All right. Let me get them lined up.

12 MS. WOODS: And I believe that stipulation
13 was put in the record at the last hearing.

14 THE COURT: It was. Okay. So we don't have
15 to put that one on.

16 - - -

17 (Thereupon, proceedings were resumed within
18 the presence of the jury as follows:)

19 - - -

20 THE COURT: All right. You may be seated.

21 Good morning, ladies and gentlemen. I hope
22 you had a really nice evening. And we are ready to
23 continue with our trial.

24 On behalf of the State, would you like to
25 call your next witness, please.

1 MS. WOODS: Your Honor, the State calls
2 Daniel Heinz.

3 THE COURT: Okay. You can come on up and
4 raise your right hand.

5 Thereupon, the STATE OF OHIO, to
6 further maintain the issues on its
7 part to be maintained, called as a
8 witness, DANIEL HEINZ, who, being
9 first duly sworn, was examined
10 and testified as follows:

11 All right. You may have a seat, and just
12 make sure that you do speak loudly and clearly and
13 into the microphone.

14 JUROR NO. 6: I know him. Does that affect
15 this?

16 THE COURT: Why don't the lawyers approach
17 for a minute.

18 - - -

19 (Thereupon, a discussion was had between
20 Court and Counsel at sidebar outside the
21 hearing of the jury and off the record.)

22 - - -

23 THE COURT: You know what, why don't you
24 approach the bench, the juror, and Miss Peggy, too.

25 - - -

1 (Thereupon, a discussion was had between
2 Court and Counsel at sidebar outside the
3 hearing of the jury as follows:)

4 - - -

5 THE COURT: Okay. If you want to come
6 forward. Now, you just indicated you know the
7 witness?

8 JUROR NO. 6: Uh-huh.

9 THE COURT: How do you know him?

10 JUROR NO. 6: He's my daughter's best
11 friend's father.

12 THE COURT: So how much interaction do you
13 have with him?

14 JUROR NO. 6: Not a lot.

15 THE COURT: Do you socialize with him?

16 JUROR NO. 6: Not really.

17 THE COURT: And it's really just your
18 children?

19 JUROR NO. 6: Yeah, they're both on the same
20 softball team. I mean, minor chatting at the game,
21 but that's about it.

22 THE COURT: Okay. And will this affect the
23 way that you assess this case?

24 JUROR NO. 6: No.

25 THE COURT: And do you feel that you could

1 still be fair and impartial to both the State and
2 the Defense?

3 JUROR NO. 6: Yes.

4 THE COURT: Now, do you know what he does?

5 JUROR NO. 6: Yes.

6 THE COURT: And what does he do?

7 JUROR NO. 6: He's a detective.

8 THE COURT: Does he ever discuss his work
9 with you?

10 JUROR NO. 6: No.

11 THE COURT: And it sounds to me like your
12 contact with him is minimal?

13 JUROR NO. 6: Pretty minimal.

14 THE COURT: So how often is your daughter
15 with his daughter?

16 JUROR NO. 6: Two, three times a week.

17 THE COURT: So the daughters are close?

18 JUROR NO. 6: Yes.

19 THE COURT: Okay.

20 JUROR NO. 6: Best friends.

21 THE COURT: And how long have they been best
22 friends?

23 JUROR NO. 6: Fifteen years, 14 years.

24 THE COURT: So a long time. But you as the
25 parents never socialized?

1 JUROR NO. 6: The parents are divorced, so I
2 don't really interact with him. For the past few
3 years now she's been staying with him, not with her
4 mother.

5 THE COURT: Oh, I see. She lives with the
6 dad?

7 JUROR NO. 6: Now. And that's happened in
8 the past few years maybe.

9 THE COURT: And you don't feel in any way his
10 testimony would have any affect on you and that you
11 couldn't be fair to both the State and the
12 Defendant?

13 JUROR NO. 6: I can be fair.

14 THE COURT: Okay. And on behalf of the
15 State?

16 MS. WOODS: You said your contact with him is
17 minimal?

18 JUROR NO. 6: Uh-huh. I said it was just
19 like at the softball games or for parent events at
20 school.

21 I've been to his house, but I just drop my
22 daughter off and pick her up, I don't interact. If
23 I do, I just say, Hi, what's going on, that kind of
24 thing.

25 MS. WOODS: Do you know which department he

1 works for inside the detective bureau?

2 JUROR NO. 6: No.

3 MS. WOODS: Did he ever discuss this case
4 with you?

5 JUROR NO. 6: No.

6 THE COURT: And you could be fair to both the
7 Government and the Defendant?

8 JUROR NO. 6: Yes.

9 MS. WOODS: Nothing further.

10 THE COURT: Mr. Vick?

11 MR. VICK: I want to say thanks, man, you
12 didn't have to do that. That action goes a long
13 way.

14 Let me just ask you this. If after the Judge
15 gives you the law you just think that they didn't
16 prove their case, are you okay if you come back with
17 a not guilty verdict and, say, you saw him at a
18 sporting event?

19 JUROR NO. 6: Yeah.

20 MR. VICK: You don't feel you would have an
21 obligation to say, I got to see this guy, I don't
22 want him to think I screwed his case up?

23 JUROR NO. 6: No.

24 MR. VICK: That's fine. Nothing more.

25 THE COURT: Okay. And thank you very much

1 for bringing that to our attention. This is how the
2 system should work.

3 MR. VICK: Absolutely.

4 THE COURT: Okay. And you don't feel
5 uncomfortable?

6 JUROR NO. 6: It was quite a shock for me.

7 THE COURT: And you don't feel uncomfortable
8 at all?

9 JUROR NO. 6: No.

10 THE COURT: Are we okay?

11 MS. WOODS: All right.

12 MR. VICK: Yes.

13 - - -

14 (Thereupon, proceedings were resumed within
15 the hearing of the jury as follows:)

16 - - -

17 DIRECT EXAMINATION OF DANIEL HEINZ

18 BY MR. MIRANDA:

19 Q. Good morning.

20 A. Good morning.

21 Q. State your name for the record.

22 A. Daniel Heinz.

23 Q. And how do you spell your last name?

24 A. H-e-i-n-z.

25 Q. Where are you employed?

1 A. City of Parma Police Department.

2 Q. How long have you been with them?

3 A. Twenty-six years.

4 Q. And were you ever employed with any other police
5 agencies before them?

6 A. No.

7 Q. What's your title with the Parma Police Department?

8 A. I am a detective with the narcotics unit.

9 Q. Okay. So as a detective in the narcotics unit, what
10 are sort of your duties or responsibilities?

11 A. We investigate all drug complaints and follow up on all
12 drug arrests.

13 Q. How many cases would you say you handle at a given
14 time?

15 A. More than I can count. Probably, I would say that I
16 have 50 open cases right now.

17 Q. Okay. Did you ever become aware of a fake Parma Police
18 Facebook page?

19 A. Yes, I did.

20 Q. Do you recall how you became aware?

21 A. I believe it was a discussion, I'm not sure if it
22 was in roll call or at some point on March 2nd that somebody
23 had started a fake Parma Police Facebook page.

24 Q. And roll call is what?

25 A. It's where we gather in the morning to get our

1 assignments.

2 Q. So you heard it somewhere at the office, at the
3 department?

4 A. Correct.

5 Q. Okay. And did you have any role in that investigation?

6 A. Yes, I did.

7 Q. What was your role?

8 A. Once we were made aware that there was a fake page,
9 of course we all started looking at it, and I began to look
10 at the page and tried to figure out how it had spread so
11 quickly. So what I did is I went to the fake page, I
12 looked at the very first post that was made on that page and
13 saw that it had numerous shares. I went through the shares,
14 I went down to the first share, which would be the first
15 person that shared this post, and it returned to a profile
16 of Anthony Novak.

17 So from that point I went to Anthony Novak's
18 Facebook page and started reading the comments on his page,
19 and there was strong indication that if he did not make the
20 page, he knew who did make the page.

21 Q. And did you do anything to document the Anthony Novak
22 page?

23 A. Yes, I took a couple screen shots, and being that
24 Detective Connor was assigned to the case, I gave the screen
25 shots to him.

1 MR. MIRANDA: May I approach, Your Honor?

2 THE COURT: You may.

3 Q. Showing you what's been marked as State's Exhibit 17,
4 do you recognize that exhibit?

5 A. Yes.

6 Q. And can you describe the exhibit?

7 A. It's a post made by Anthony Novak the morning that this
8 page, we first were aware of the page saying that, "I'm just
9 going to say I woke up and feel very satisfied by my actions
10 right now."

11 Q. Okay. And is that the screen shot you described
12 earlier?

13 A. Yep. I can't say definitely if I took this screen
14 shot. I did share the screen shots with Detective Connor.
15 I don't know if he used my screen shot or if he took his
16 own.

17 Q. Okay. Let me ask you this. Is that the information
18 you recall observing?

19 A. Yes, it looks like it is my screen shot.

20 Q. So that's a true and accurate description of what you
21 observed that morning?

22 A. Correct.

23 Q. And is that exhibit I have showed you consistent with
24 what's shown on this screen up here?

25 A. Yes.

1 Q. Okay. And can you just describe again what's that top
2 post?

3 A. "I'm just going to say I woke up and feel very
4 satisfied by my actions right now."

5 Q. Okay. And then is there a second post on this?

6 A. The second post is I believe the original post that was
7 made in reference to the Parma Police Department where he
8 wrote a story about homeless people and shared that, and
9 that would be the first share of that story.

10 Q. So that second post is the sharing of the story that
11 sort of tipped you off?

12 A. Correct.

13 Q. I am showing you what's been marked as State's Exhibit
14 11, do you recognize that exhibit?

15 A. I do not. I don't believe I took this one.

16 Q. Can you take a look at all the pages of that exhibit.

17 A. No, I do not recall seeing this or taking these shots.

18 Q. Okay. If I can direct you to a specific portion here.

19 MR. VICK: Objection, Your Honor.

20 THE COURT: Overruled.

21 MR. VICK: May we approach?

22 THE COURT: You may.

23 - - -

24 (Thereupon, a discussion was had between
25 Court and Counsel at sidebar outside the

1 hearing of the jury and off the record.)

2 - - -

3 MR. MIRANDA: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MR. MIRANDA:

6 Q. Showing you what's been marked as State's Exhibit 18,
7 do you recognize that document?

8 A. Yes.

9 Q. And how do you recognize it?

10 A. It's the one that we went over earlier, where he says
11 he's very satisfied by his actions right now.

12 Q. And you personally observed that?

13 A. Yes, I did.

14 Q. Okay. And that's a true and accurate depiction of what
15 you observed?

16 A. Yes.

17 Q. And this version contains comments on it, correct?

18 A. Yes.

19 Q. This exhibit.

20 And can you describe what about that document was
21 important to you?

22 A. Once again, it's comments over saying he woke up
23 feeling very satisfied about what he did. And there were
24 some comments from, I guess, followers and friends of his,
25 Do you have any food or money or cigarettes and drugs; and

1 he responds, I'm not willing to do time for this guys.

2 He'll be leaving this city in a body bag.

3 Q. And is what you just read, is that accurately depicted
4 on the screen here?

5 A. Yes.

6 Q. And so you viewed these posts on Anthony Novak's
7 personal Facebook page. Why was that relevant to your sort
8 of investigation?

9 A. Well, it's relevant to me being that it appears he
10 knows he did something wrong.

11 MR. VICK: Objection, Your Honor.

12 THE COURT: That's sustained.

13 A. And that --

14 Q. Let me give you a different question.

15 MR. VICK: Your Honor, I move to strike the
16 responsive portion of that.

17 THE COURT: Okay, your motion is granted.

18 BY MR. MIRANDA:

19 Q. Based on the information you discovered, what did you
20 provide to Detective Connor?

21 A. I provided him with a screen shot.

22 Q. And why did you provide him that information?

23 A. Because the comment about leaving in a body bag.

24 Q. Okay.

25 MR. MIRANDA: Can I have a second, Your

1 Honor?

2 THE COURT: You may.

3 Q. And, Detective, could you just describe the atmosphere
4 of the office that morning?

5 A. Once we --

6 MR. VICK: Objection, Your Honor.

7 THE COURT: Overruled.

8 A. Once we were made aware of the Facebook page, I believe
9 we all stopped what we were doing to take a look at it, and
10 a couple of us tried to figure out who did it and where it
11 started, and that's how I came across this.

12 Q. And are you talking about the whole department or the
13 bureau?

14 A. The bureau.

15 Q. Okay.

16 MR. MIRANDA: Nothing further, Your Honor.

17 THE COURT: Okay. Cross-examination.

18 MR. VICK: Thank you, Your Honor.

19 - - -

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25

CROSS-EXAMINATION OF DANIEL HEINZ

BY MR. VICK:

Q. Good morning, Detective. How are you?

A. Good morning.

Q. You stated on the morning of March 2nd you were made aware that there was a fake Facebook page, correct?

A. Yes.

Q. And you viewed the first posting on there about the homeless, correct?

A. I did.

Q. Did you look at the other five postings on there?

A. I don't know if I saw all of them. I did look and see something about some abortions and things like that. I don't know if I read every post.

Q. So your job as a detective is to take information in a case and fully investigate it, correct?

A. When I am assigned a case, yes.

Q. Correct, when you're assigned to a case. So a drug case, you get assigned a drug case and you start doing your investigation, looking at who may have done the crime, correct?

A. Correct.

Q. Looking at what substance or what drug is involved in the crime, correct?

A. Sure.

1 Q. And you do everything you feel like you need to do to
2 fully educate yourself and get familiar with the allegations
3 of that crime, correct?

4 A. Sure.

5 Q. And you were made aware that there was a fake Facebook
6 page, correct?

7 A. Correct.

8 Q. Your testimony is you did not look at the entire
9 contents of the fake page?

10 A. As I stated earlier, I wasn't assigned the case and all
11 I did was just pass an investigative lead on to the
12 detective that was assigned to the case.

13 Q. Okay. So you weren't assigned the case, so you had no
14 official function in the case, correct?

15 A. I think we all have an official function in the case if
16 it deals with our police department.

17 Q. But you weren't assigned to the case?

18 A. No, I wasn't assigned to it.

19 Q. Thank you. Now, you also mentioned that you looked at
20 posts about the police department offering teenage abortions
21 in the back of a van, correct?

22 A. I did see a post with some language like that. I don't
23 recall exactly what it stated.

24 Q. Okay. And did you see the post about the pedophile
25 reform event at a Catholic church?

1 A. I believe I did see it.

2 Q. And you would agree with me that no reasonable police
3 department would offer a pedophile reform event at a
4 Catholic church, correct?

5 A. I would have to agree with that.

6 Q. And the same thing with the abortion one, right,
7 Detective?

8 A. I don't recall if some people actually believed that
9 one. I know that there were people that believed that
10 homeless post.

11 Q. And that's great, because that wasn't in response to my
12 question either.

13 Did you ever have any knowledge of a police
14 department offering abortions?

15 A. No.

16 Q. So you knew that this page was fake the minute you
17 looked at it, didn't you?

18 A. By looking at it visually, it appeared to be the same
19 as ours. The posts obviously -- the only way you could tell
20 the difference between me looking at, briefly, ours and this
21 page were the posts.

22 Q. Correct. And the content of the posts, correct?

23 A. Correct.

24 Q. And that's really what separated or set it apart from
25 the real Facebook page?

1 A. Yes.

2 Q. And the real Facebook page wasn't altered in any way,
3 correct?

4 A. Our department page?

5 Q. That's correct.

6 A. I can't answer that because I really have nothing to do
7 with it.

8 Q. That's fair enough. Okay.

9 The comment on State's Exhibit 17, which is also
10 duplicated on State's 18, "I am just going to say I woke up
11 and feel very satisfied by my actions right now," you took
12 that screen shot and that's what that document says,
13 correct?

14 A. Correct.

15 Q. That document doesn't have any indication or any
16 description as to what actions that post is talking about,
17 correct?

18 A. His actual post, no, the comments do, that's correct.

19 Q. The comments do?

20 A. Yes.

21 Q. What, in your opinion, is the comments talking about?

22 A. The comments, in my opinion, are responses to his post
23 about the homeless people and not feeding homeless people
24 and the comments obviously had to do with feeding and I'm
25 hungry and food.

1 Q. That's correct, isn't it?

2 This is a joke between Jeremy Orges, Thomas
3 Weishampel, Anthony Novak, and Ash Cilantro Torres, where
4 the two posts above that are saying, Hey, I'm hungry, I need
5 cigarettes, I don't have any money, and Anthony's going, I'm
6 not willing to do time for this; is that what the posts say?

7 A. Well, I don't see -- Yes.

8 Q. So you see that's what they say. And the first post
9 about the homeless was, In the City of Parma you're not
10 allowed to, the citizens are not allowed to feed the
11 homeless anymore, and if you do, you're going to do 60 days
12 in jail, correct?

13 A. Correct.

14 Q. And that is on Anthony Novak's personal Facebook page?

15 A. Correct.

16 Q. This is not on the fake Facebook page?

17 A. This is -- no, it's on his personal page.

18 Q. And it's not on the City of Parma's real Facebook page,
19 correct?

20 A. No.

21 Q. And it's not on the City of Parma's real website,
22 correct?

23 A. Correct.

24 Q. Thank you.

25 MR. VICK: I have nothing further, Your

1 Honor.

2 THE COURT: All right. Redirect?

3 MR. MIRANDA: No redirect, Your Honor.

4 THE COURT: Okay. You may step down.

5 - - -

6 (Thereupon, the witness was excused.)

7 - - -

8 THE COURT: You may call your next witness.

9 MS. WOODS: Thank you, Your Honor. The State
10 calls Lisa Jerman.

11 THE COURT: You can come on up and I'll swear
12 you in. Raise your right hand, please.

13 Thereupon, the STATE OF OHIO, to
14 further maintain the issues on
15 its part to be maintained, called as
16 a witness, LISA JERMAN, who,
17 being first duly sworn, was examined
18 and testified as follows:

19 All right. You may have a seat up in the
20 witness chair. And just make sure you do speak
21 loudly and clearly so that our court reporter can
22 take down all of your information. Okay?

23 THE WITNESS: Okay.

24 THE COURT: And your seat is not adjustable,
25 but your microphone is.

1 THE WITNESS: All right.

2 THE COURT: Thank you.

3 - - -

4 DIRECT EXAMINATION OF LISA JERMAN

5 BY MS. WOODS:

6 Q. Good morning.

7 A. Good morning.

8 Q. For purposes of our jury, could you please identify
9 yourself, and then for our court reporter spell your name.

10 A. Lisa Jerman, and that's J-e-r-m-a-n.

11 Q. And where are you employed, Miss Jerman?

12 A. City of Parma.

13 Q. And what is your job title for the City of Parma?

14 A. Safety forces dispatcher.

15 Q. And what does your job entail?

16 A. It entails many things, answering phones, 9-1-1 and
17 non-emergency calls, fire and police; answering the radio;
18 keeping track of where our officers are at all times, and
19 our medical units; entering warrants, entering missing
20 persons and stolen vehicles.

21 Q. Sounds like a very full-time job?

22 A. Very full time, yes.

23 Q. How much down time do you get in a regular day?

24 A. How much what? I'm sorry.

25 Q. How much down time do you get to just sit around and

1 chat with your co-workers?

2 A. No time at all.

3 Q. On a regular weekday during the day, how many people
4 are working with you?

5 A. Our minimum is at five right now. We are in the
6 process of hiring more. We are taking on -- we are a
7 regional dispatch center now, so --

8 Q. What is a regional dispatch center?

9 A. Several cities involved, we dispatch for Parma, Parma
10 Heights and Brooklyn, police and fire.

11 Q. So you get calls from all of those cities?

12 A. Exactly.

13 Q. How is the work divided?

14 A. Well, when we come into work, we are assigned certain
15 spots; there are a couple call takers, two call takers at a
16 time, there's going to be a fire dispatcher, there will be a
17 Parma Police dispatcher, and there's a Parma Heights and
18 Brooklyn dispatcher, they're on the same band.

19 Q. So if a person calls in to a Parma Heights dispatcher,
20 the same person could be calling in from Brooklyn Heights as
21 well; is that correct?

22 A. From Brooklyn?

23 Q. I'm sorry. From Brooklyn.

24 A. You mean when the phone calls come in?

25 Q. Yes.

1 A. Yeah, phone calls come in, we determine what city it
2 is, take the call, and that call will be sent over to the
3 dispatcher for dispatch.

4 Q. Were you working on March 2nd of this year?

5 A. I don't have that information with me, whether I was or
6 not.

7 Q. Did you take any calls as it related to a fake Facebook
8 page?

9 A. Yes.

10 Q. If I played that call for you, would you be able to
11 identify it?

12 A. Yes.

13 Q. I am going to play for you what's now marked as State's
14 Exhibit 9-I.

15 MS. WOODS: If my technology works.

16 I'll bring it up here so you can hear it.

17 - - -

18 (Playing dispatch call - 9-I)

19 - - -

20 BY MS. WOODS:

21 Q. Do you recognize 9-A? I'm sorry. 9-I?

22 A. 9-I?

23 Q. Do you recognize the voices in that?

24 A. In this?

25 Q. Yes.

1 A. My voice.

2 Q. Do you recognize your voice in that?

3 A. Yes. Yes.

4 Q. So you took this call?

5 A. Yes.

6 (Playing dispatch call - 9-I)

7 Q. Was that the entire call?

8 A. Yes.

9 THE COURT: Could everyone hear that?

10 A JUROR: No.

11 A JUROR: No.

12 MS. WOODS: They will all be replayed later.

13 THE COURT: Okay.

14 MS. WOODS: I will get them in later. They
15 will all come in again with a different witness.

16 THE COURT: Okay.

17 BY MS. WOODS:

18 Q. How were you made aware that this was floating around,
19 this fake Facebook page was floating around out there?

20 A. We had -- we had another call taker taking calls that
21 day, and we're all in the same room, so you're hearing
22 things that are going on about this fake Facebook page, and
23 people are calling in about it.

24 And one of our dispatchers took a lot of -- you
25 know, a lot of calls were coming through, so when I took

1 that call, I already knew that it was being taken care of.

2 MS. WOODS: No further questions for this
3 witness, Your Honor.

4 THE COURT: Okay. Cross-examination?

5 MR. VICK: Yes. Thank you, Your Honor.

6 - - -

7 CROSS-EXAMINATION OF LISA JERMAN

8 BY MR. VICK:

9 Q. Good morning. How are you?

10 A. Fine. How are you?

11 Q. Good. Thank you.

12 Your job is to take phone calls, right?

13 A. Correct.

14 Q. I apologize. Part of your job?

15 A. Part, yeah.

16 Q. From what you had described to the prosecutor, you have
17 a very involved job, correct?

18 A. Very.

19 Q. Very important?

20 A. Yes.

21 Q. And entering warrants is probably really important,
22 correct?

23 A. Yes, it's part of the job.

24 Q. Correct. You had said that the department is hiring
25 more dispatchers?

1 A. Yes. We're in the process of training and hiring, yes.

2 Q. Is that because you don't have enough to field the
3 volume of answering calls, emergency, non-emergency, where
4 the officers are, handling the warrants, or you just need
5 additional help?

6 A. We're taking on another city. Soon we're taking on
7 Brook Park, so we need more dispatchers.

8 Q. So the reason for hiring additional ones is for
9 Brook Park coming on board?

10 A. Brook Park, yes.

11 Q. And you testified that you handled that phone call,
12 right?

13 A. Yes.

14 Q. How long was that call?

15 A. It wasn't very long at all.

16 Q. Ten seconds?

17 A. Yeah. I already knew that the calls were coming in, we
18 were getting calls already and we were handling them.

19 Q. And part of your job duties and responsibilities is to
20 get information out or answer questions to people that call,
21 correct?

22 A. Uh-huh.

23 Q. And people call with pretty absurd things sometimes,
24 don't they?

25 A. Yes.

1 Q. Cat in a tree?

2 A. Yes.

3 Q. Other types of incidents like that?

4 A. Uh-huh.

5 Q. And on the flipside, you have maybe domestic violence
6 victims calling where they're screaming for help?

7 A. Yes.

8 Q. And that probably is really stressful dealing with
9 those people, right?

10 A. Oh, yes.

11 Q. Trying to keep them calm?

12 A. Exactly.

13 Q. Letting them know help is on its way?

14 A. Yes.

15 Q. Do you handle 9-1-1 calls as well?

16 A. Yes, we do.

17 Q. And you said you answer the phones all the time; is
18 that correct?

19 A. I mean, if it's my assigned duty for the day, I would
20 be answering the phones. If we have over -- you know, if
21 the call takers are busy, you may pick up a phone call, you
22 know, if my radio's not busy, you know, we'll just pick up
23 and answer.

24 Q. But it's not a function where you answer a call, pick
25 up, boom, answer another call, hang up, answer another call,

1 hang up, answer another call, hang up, I mean, there's time
2 in between your day where you're not answering calls,
3 correct?

4 A. Could be, maybe on radio.

5 Q. And when you took this call, were you prevented from
6 answering another call?

7 A. I cannot tell you that for sure.

8 Q. When you took this call, were you prevented from
9 sending an officer's car out to a victim?

10 A. I cannot tell you yes or no on that.

11 Q. So there's no evidence that you were; is that what
12 you're telling us?

13 A. I have no idea. That would need to be further
14 investigated if it was.

15 Q. And you didn't get any calls from Anthony Novak, did
16 you?

17 A. No.

18 Q. And you're aware that there was a fake Facebook page,
19 correct?

20 A. At that point, at the time of that call, yes, I did.

21 Q. Did that fake Facebook page make any calls to you?

22 A. I don't understand your question.

23 Q. Did you receive any calls from the Internet?

24 A. No.

25 MR. VICK: Thank you, Your Honor. Nothing

1 further.

2 THE COURT: All right. Thank you. Redirect?

3 - - -

4 REDIRECT EXAMINATION OF LISA JERMAN

5 BY MS. WOODS:

6 Q. You told Mr. Vick that your job isn't to just answer
7 phones, that sometimes you don't get call after call. Are
8 there times where you get call after call?

9 A. Certainly, a lot of times.

10 Q. And when you get calls about the cat in the tree or a
11 fake Facebook page, could your time have been spent doing
12 something better?

13 MR. VICK: Objection.

14 THE COURT: Sustained.

15 MS. WOODS: No further questions, Your Honor.

16 THE COURT: Okay. Thanks. Recross?

17 MR. VICK: Oh, nothing, Your Honor.

18 THE COURT: Thank you. You may step down.

19 - - -

20 (Thereupon, the witness was excused.)

21 - - -

22 THE COURT: All right. You may call your
23 next witness.

24 MS. WOODS: The State calls Detective Klein.

25 THE COURT: Okay. Detective, if you would

1 come up and I will swear you in.

2 Thereupon, the STATE OF OHIO, to
3 further maintain the issues on its
4 part to be maintained, called as a
5 witness, MICHAEL KLEIN, who,
6 being first duly sworn, was examined
7 and testified as follows:

8 Okay. You may have a seat. And please just
9 make sure that you speak loudly and clearly into the
10 microphone.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Your seat is not adjustable, but
13 your microphone is.

14 MS. WOODS: Your Honor, may I approach so I
15 can grab those exhibits?

16 THE COURT: You may.

17 MS. WOODS: Thank you.

18 - - -

19 DIRECT EXAMINATION OF MICHAEL KLEIN

20 BY MS. WOODS:

21 Q. Good morning, Detective.

22 A. Good morning.

23 Q. For purposes of our jury, could you please introduce
24 yourself, and for purposes of our court reporter, please say
25 your name -- spell your name and your badge number, please.

1 A. Detective Michael Klein, that's K-l-e-i-n, badge 743,
2 with the Parma Police Department.

3 Q. Detective, you said you're with the Parma Police
4 Department, where are you with the Parma Police Department?

5 A. Currently, I'm assigned to the criminal investigation
6 division, which is our detective bureau.

7 Q. And how long have you been with the detective bureau?

8 A. Since 1997, so 19 years.

9 Q. How long have you been with the police department, with
10 Parma as a whole?

11 A. Going on 31 years now.

12 Q. Did you have any training to be a police officer or a
13 detective?

14 A. During my initial employment they sent us down to the
15 OSP Academy for the initial certification, so I had the
16 training through the uniform patrol part of it way back
17 then. When I got into the detective bureau, I received some
18 specialized training in regards to felony investigations,
19 interview techniques. And currently I have some training in
20 regards to some forensic analysis of digital evidence.

21 Q. What are your daily duties as a detective?

22 A. My primary duty assignment is case investigation. I
23 get my own case load of anything from assaults to thefts
24 that I investigate.

25 Q. Do you assist any other detectives in their

1 investigations?

2 A. Yes. I received some training for some forensic cell
3 phone, computer, and image work that I assist other
4 detectives with.

5 Q. What kind of training is that?

6 A. Training through several different -- a lot of it is
7 vendor specific training; like with the cell phone analysis,
8 the system we use is called Celebrate, so I received
9 training from them, but then we get a lot of training
10 through the Ohio Bureau of Criminal Investigations, the FBI,
11 several other law enforcement type entities that teach
12 investigators how to correctly analyze computers, cell
13 phones and video images.

14 Q. Are you Parma's defacto in-house computer guy?

15 A. Computers, cell phones, video images, yeah, pretty much
16 that stuff.

17 Q. If a detective in your bureau gets a case with video or
18 a cell phone that needs extraction, is that something that
19 you would assist with?

20 A. Yes.

21 Q. Did you assist Detective Connor as it relates to items
22 relating to Anthony Novak or a fake Facebook page?

23 A. Yes.

24 Q. And what did you do?

25 A. Detective Connor presented me with a list of items,

1 some cell phones, some computers, some flash memory, even a
2 couple of game consoles that were seized at the Defendant's
3 house during a search warrant of the house. Detective
4 Connor had obtained a search warrant to search those items
5 for any type of digital evidence related to the case.

6 Q. And what did you do with those items? We'll start with
7 the game consoles first.

8 A. I examined them, I basically took them apart to get to
9 the memory cores. I ran them through our software, FTK, for
10 the computer's AccessData product, to analyze them to see if
11 there were any images, communications, anything related to
12 the Facebook investigation.

13 Q. For those that might not know, you said there's a
14 memory card in those game consoles. What is usually stored
15 there?

16 A. Potentially, as far as game systems go, the most I ever
17 found on any of those have been -- with a lot of the game
18 systems you can log online with them and actually
19 communicate with other people during live playing of games.
20 It's almost like, it could be an Internet server basically,
21 so you can do a lot of the same stuff you can do on a
22 computer, with a lot of the newer game consoles.

23 So usually I'm looking for any type of
24 communications, chats, you know, back and forth between
25 people, that type of thing.

1 Q. And as it relates to this case, did you find anything
2 in those game consoles?

3 A. Nothing significant or connected with the
4 investigation, no.

5 Q. If I showed you physical evidence, would you be able to
6 recognize them?

7 A. I should, yes.

8 Q. I'm going to show you what's been marked as State's
9 Exhibit 4.

10 MS. WOODS: Your Honor, may I approach?

11 THE COURT: You may.

12 BY MS. WOODS:

13 Q. Do you recognize that item, Detective?

14 A. Yes.

15 Q. And how do you recognize that item?

16 A. It's got one of our evidence tags on it that describes
17 what the contents are, along with the No. 6, which is off,
18 probably off the inventory from the search warrant from the
19 house, and my name and initials are down here, too, which
20 indicates when I was done processing the phone.

21 Q. And when you process a phone, what do you do?

22 A. I take a look at it, see what the make and model of it
23 is, who the carrier is for it, to determine if my equipment
24 and software can analyze it, because not all cell phones can
25 be analyzed.

1 Q. Was this phone able to be analyzed?

2 A. Oh, yes. Yeah.

3 Q. And what's the make and model on that phone?

4 A. It's a Samsung Galaxy S5, a very popular model.

5 Q. So when you analyze a phone, or analyze a Samsung in
6 this case, what do you do?

7 A. I have the software interrogate the phone to pull off
8 anything that's recoverable on the phone. Most of the time
9 it's your contact list, like most people have on their
10 phone, text messages, phone records, if they're available on
11 the phone, as far as who you talked to over the past X
12 number of days. Nowadays I get a lot of, very similar to a
13 computer, I'll get all your web surfing history, what sites
14 you would have accessed through your Internet server on the
15 phone, power on, power off, a bunch of administrative
16 information.

17 Q. And once you get this information, what do you do with
18 it?

19 A. Depending on the investigator and what they're
20 requesting off the phone, I analyze the evidence that got
21 pulled off of it to see if there's anything related to the
22 investigation. If it's a drug case, obviously I'm looking
23 for anything that shows any type of drug activity, pedophile
24 stuff on kiddy porn cases. With this it was obviously a
25 Facebook issue, communications referencing Facebook, that

1 type of thing.

2 Q. Do you save all of the information that you pull off of
3 a phone?

4 A. Correct.

5 Q. And where do you save it?

6 A. The primary collection point is our computer back at
7 the office that I do all the analyzing on. I always keep
8 the raw data right there in its original form in case it's
9 requested. What I do for the investigators, because they
10 can't work with all the raw data I pull off from the
11 software, I have to provide it to them in a standardized
12 format that they can scroll through. Most of the time
13 that's an Excel spreadsheet, because Excel is real easy to
14 click through when you're examining a large amount of data.

15 Q. I am going to show you what's been marked as State's
16 Exhibit 2, do you recognize it?

17 A. Yes, this would have been the end product for my exam
18 that I would have presented to Detective Connor on the
19 Samsung Galaxy S5.

20 Q. With the information that you pull off of the phone --
21 what kind of information do you pull off?

22 A. As I stated, whatever data is available on the unit
23 that the software recognizes and categorized. Primarily,
24 I'm usually targeting text messages, chat records, images, a
25 lot of times pictures, videos that are stored on the phones.

1 Nowadays, phones are basically mini computers, so it can
2 have a lot of different information on it.

3 Q. I'm going to show you what's been marked as State's
4 Exhibit 2-A, do you recognize this document?

5 A. Yes.

6 Q. And how do you recognize it?

7 A. It's our standard format, if you print it out of the
8 Excel spreadsheet that I provide to the investigators.
9 That's a summary of my processing of an individual unit.

10 Q. And is that the same processing you did on State's
11 Exhibit 4?

12 A. This one actually documents the processing of the
13 Kyocera cell phone, not the Samsung.

14 Q. How many cell phones did you do a forensic analysis on
15 in this case?

16 A. As I recall, there were two cell phones and one like a
17 tablet, more like a smallish touch screen tablet I worked
18 on.

19 Q. As it relates to the Samsung, were you able to pull any
20 text messages?

21 A. Oh, yes.

22 Q. How many text messages about were you able to pull?

23 A. If I recall, the end report was something in the 2,000
24 range.

25 Q. And in those -- did you read through all of those text

1 messages?

2 A. Yes.

3 Q. Was there anything that relates to the creation of a
4 fake Parma Police Department Facebook page?

5 A. Yes.

6 Q. At any point during the course of your forensic
7 analysis, did you create a separate list of just those text
8 messages?

9 A. Yes.

10 Q. I'm going to show you what's been marked as State's
11 Exhibit 2-B, and see if you recognize it.

12 MS. WOODS: Your Honor, may I approach?

13 THE COURT: You may.

14 A. Yes, I recognize it.

15 Q. And how do you recognize that?

16 A. It's the text messages I isolated, per your request
17 actually, related to this case off of that phone.

18 Q. I'm showing you what's up on the Mondopad, is that the
19 same as State's Exhibit 2-B that is in your hand?

20 A. Yes, it is.

21 Q. And in your view of those text messages, what did you
22 find?

23 A. There were numerous conversations or texting between
24 the Defendant and other persons referencing the Facebook
25 page, what was going on with it, responses he was getting

1 about the Facebook page, and basically how it was hitting
2 the news and how famous he was going to be or they were
3 going to be.

4 Q. In those messages, Detective -- why don't you give us a
5 sampling of some of those text messages. And I can zoom in
6 here so the jury can read that a little better.

7 Let's start from the oldest one.

8 A. The oldest one I have is from, it looks like March 2nd,
9 2016, where someone named Jeremy, it starts with Jeremy
10 saying, "I hope you don't get shut down, Novak." Novak
11 obviously referring to the Defendant. And then Novak sends
12 back to Jeremy, "Nope it's up and running." And then the
13 records show that they shared a link to the Fox 8 News
14 website where they were covering the --

15 MS. WOODS: Your Honor, may I approach the
16 witness with a mouse so that he can direct the
17 screen so that it's matching what he's discussing?

18 THE COURT: You may.

19 A. I'm basically just going to scroll all the way to the
20 bottom of the screen, which is going to show us the oldest
21 one that I'm referring to. Yeah, right here at the bottom.
22 This is the one that I was first talking about. If you read
23 these columns across, it says "From," and it gives you the
24 target number, and this information is drawn from the
25 phone's contact list. I don't know who Jeremy is or if it's

1 really a Jeremy, it's just how it's recorded in the phone's
2 contact list.

3 So when the software pulls it off, it says that
4 phone number is Jeremy, and on the 2nd of March at 9:46 --
5 "Read" means obviously that the holder of the phone accessed
6 it and read the text message. And that's where it starts
7 with, "Novak did you create that Parma Police Department
8 Facebook page?" And then he gets a second text from Jeremy
9 right after that that he read that said, "MAYBE I'm just
10 jumping to conclusions but I wanna say it was you."

11 Now, as you can see with the next one up, this is
12 sent to Jeremy's phone at this date and time. It's sent,
13 which means someone who's using the Samsung phone to send a
14 text to Jeremy, and that says, "Yes hahah and that post has
15 been shared 203 times hahah."

16 And then as you continue reading up, the phone
17 received a text from Jeremy. Jeremy says, "That's the
18 funniest thing ever." And then another one that was read on
19 the phone that says, "You made that page ten years ago?"
20 Then there was one that was sent to Jeremy's phone from the
21 Samsung phone that says, "When I woke up the post had 3000
22 views about 10 minutes later it had six thousand views
23 hahah."

24 Then Jeremy sends him a text saying, "I'm dying
25 right now I was like damn I can't believe these police."

1 Then the phone sent out a text saying, "Hahahah."

2 Then it continues on. "And then I was like...

3 NOVAKKK" gets sent to the phone. There's more laughing

4 about the 8000 views, that the phone sent to Jeremy. Then

5 they ask, Jeremy sends a text to the phone, which was read,

6 and the text says, "How did you differentiate it from the

7 actual Parma police page?" And then a second text comes

8 into the phone, which was read, and that text was from

9 Jeremy again and it says, "Or did you somehow hack into it."

10 And then the holder of the phone sends a text to Jeremy, "I

11 just made a page and gave it the same name and pictures and

12 shared the post on my wall. It just grew from me sharing it

13 once hahah."

14 Then Jeremy sends, "That's awesome." And then

15 Jeremy sends another one, "You have the best ideas man."

16 And then Jeremy sends another one, "Oh my god I'm dying

17 laughing right now in a silent class room of people taking a

18 test." Jeremy sends another one, "About the written exams

19 and shit how minutes should not apply." And then the holder

20 of the phone texts to Jeremy, "Hahahah."

21 And then another text is sent to Jeremy, "Did

22 everyone look at you?" Jeremy sends a text back saying,

23 "Yeah like why are you laughing." Then Jeremy sends another

24 text, "People who are sharing it are getting real upset."

25 And then Jeremy sends another text, "So I shared it too."

1 And then Jeremy sends another text, "And got real upset."
2 Then the holder of the phone texts back to Jeremy saying,
3 "Hahahah."

4 Then the holder of the phone gets a text from
5 someone identified as Drew with a specific telephone number
6 that says, "I like someone commented that it's so inhumane
7 and that other cities are doing it too. Hahah."

8 MR. VICK: Judge, may we approach?

9 THE COURT: You may.

10 - - -

11 (Thereupon, a discussion was had between
12 Court and Counsel at sidebar outside the
13 hearing of the jury and off the record.)

14 - - -

15 BY MS. WOODS:

16 Q. Detective, these are just a small sample of the texts
17 that were pulled that regarded to this. How many texts over
18 all were sent or received regarding this fake Facebook page
19 that you were able to determine?

20 A. Well, I don't have an official count on the number of
21 texts, but there's about ten or eleven pages worth that I
22 isolated for you.

23 Q. And when you isolated these text messages, what
24 criteria were you looking for?

25 A. In the software you're able to search target words, so

1 obviously my target words here were police, Facebook, that
2 type of thing, and that brought me to the locations on the
3 text records, and then I would have to start reviewing to
4 see, I still had to follow the whole line. Like with these
5 texts, there was actually texts in between that had nothing
6 to do with the case, talking about picking up a
7 prescription, I think there was a family illness. There
8 were some texts that just had nothing to do with this, so I
9 eliminated those and just compiled the ones that looked like
10 they were conversational, part of the Facebook
11 investigation.

12 Q. And in these text messages, in your training and
13 experience, you didn't change any of the words; this is
14 exactly how it appeared on the phone?

15 A. Correct. If you examine the raw data that was
16 presented to Detective Connor, all these texts are present
17 in their exact same context and form, just out of order,
18 because I eliminated all the un-involved stuff.

19 Q. What other actions did you take with the Samsung phone?

20 A. With the Samsung phone, once I did my exam, I isolated
21 the pertinent text messages obviously, I went through the
22 images because I figured somebody who built a web page would
23 need images to work off of to see if I had anything that
24 matched up with, you know, a Parma PD patch or something
25 like that.

1 Q. Did you pull any images from the phone that were
2 responsive to the Facebook page?

3 A. Not that I recall from the phone itself, no.

4 MS. WOODS: Your Honor, may I approach?

5 THE COURT: You may.

6 Q. Detective, I am handing you what has been marked as
7 State's Exhibit, we'll start with 5-B, do you recognize
8 that?

9 A. Yeah. This would have been the Toshiba laptop that was
10 submitted for exam.

11 Q. Did you do a forensic exam on that computer?

12 A. Yes, I did.

13 Q. I'm also going to show you what's been marked as
14 State's Exhibit 5-A, do you recognize that?

15 A. This is a second Toshiba laptop submitted for exam.

16 Q. Are there any markings on these exhibits that indicate
17 how you're able to identify those?

18 A. Each one of them has an evidence sticker that describes
19 what the item is.

20 Q. And are your initials on these as well?

21 A. On the outside packaging I did not initial anywhere.

22 Q. Did you do a forensic analysis of these two laptops?

23 A. Yes, I did.

24 Q. And is your forensic analysis of the laptop the same as
25 if, same as a cell phone, or is it different?

1 A. It's different software, slightly different procedure.
2 You have to isolate the hard drive and apply a write block
3 to make sure that your software and computer doesn't
4 contaminate the target hard drive, but then the software
5 takes over after that, pulls off the information, and then
6 you examine it off of what you took off the hard drive.

7 Q. Did you find -- what did you find as it relates to the
8 laptops; anything about a fake Facebook page?

9 A. Yeah, there were images specifically that I took off of
10 it and provided to Detective Connor that look like they
11 might have been related to the case.

12 Q. What did you do with those images that you pulled off?

13 A. I archived them to a disk and provided them to
14 Detective Connor.

15 MS. WOODS: Your Honor, may I approach?

16 THE COURT: You may.

17 Q. I am handing you what has been marked as State's
18 Exhibit 19, do you recognize it?

19 A. Yes.

20 Q. How do you recognize it?

21 A. It's marked, it's on one of our Parma Police evidence
22 disks, and it's marked with the case information.

23 Q. And what is that?

24 A. The case information?

25 Q. What is the disk of?

1 A. Images from Novak's computer.

2 Q. Are those images you took from the laptops?

3 A. Yes.

4 Q. I am showing you what's been marked as State's Exhibits
5 7, 8 and 21.

6 MS. WOODS: Your Honor, may I approach?

7 THE COURT: You may.

8 Q. Take a look at those, Detective, and see if you
9 recognize those.

10 A. Yes, I do.

11 Q. And how do you recognize those?

12 A. They appear to be the copies of the images that I took
13 off the computer and provided to Detective Connor.

14 Q. Let's start with Exhibit 7. State's Exhibit No. 7, is
15 that the same as what is showing up here on the Mondopad?

16 A. Yes.

17 Q. And what is that an image of?

18 A. It appears to be a screen capture of comments posted on
19 the Internet from the Facebook page.

20 Q. And did you create this screen shot or was it already
21 on the laptop?

22 A. It was already on the laptop.

23 Q. And it can't be read -- what are the comments on there?

24 A. Starting at the top where it's Scarlett Calvert,
25 comments, "Shame on you parma police. No wonder people are

1 turning against police. You need your heads examined."

2 And then just below that an Allison Virgili says,
3 "This is a fake page."

4 And then the same Scarlett Calvert responds, "I sure
5 hope so. But I went on parma police page and it says the
6 same."

7 Q. Let's turn to State's Exhibit 8. Is this the same up
8 on the Mondopad that you're holding in your hand?

9 A. Yes.

10 Q. And what is that of?

11 A. Again, a screen shot of a posting from the Facebook
12 page indicating that the Parma Police are looking for a
13 subject involved in a robbery.

14 Q. And for purposes of the record, can you read what that
15 post says?

16 A. At the top it's titled, "The City of Parma Police
17 Department," and then it says, "We have forgotten to post
18 that on September 30, 2015 at approximately 10 a.m. the
19 Parma Subway Sandwich Shop located at 5890 Broadview Rd.
20 was robbed at knife point. The white male offender got away
21 with a small amount of money and did not harm the clerk.
22 Moments after an unrelated African American women was seen
23 loitering for over 20 minutes in front of the store despite
24 their no loitering policy. If you have any information
25 regarding this African American womans whereabouts please

1 contact The City Of Parma Police Department so that she may
2 be brought to justice. This is the best still photo we have
3 of the offender. Mentor Police and Middleburg Hts. Police
4 have reported similar loitering offenses which may be the
5 same female. The Parma Police Department is seeking
6 assistance identifying the individual in the picture.

7 Please contact Detective Joe Tremble."

8 Q. Does a Detective Joe Tremble work for the Parma Police
9 Department?

10 A. No.

11 Q. Was there an armed robbery that you were aware of in
12 Parma?

13 A. Not that I'm aware of, no.

14 Q. And on page 2 of State's Exhibit 8, does that match
15 what you have in your hand?

16 A. Correct. It's the bottom half, which would have
17 included the pictures from the surveillance video.

18 Q. Were these screen shots that you prepared or were they
19 already on the laptop?

20 A. They were already on the laptop.

21 Q. I am showing you what's been marked as State's Exhibit
22 21, is this, what's up on the screen, the same as what is in
23 your hand?

24 A. Yes.

25 Q. Do you recognize it?

1 A. Yes.

2 Q. And how do you recognize it?

3 A. It appears to be one of the screen shots from the
4 computer that I archived for Detective Connor.

5 Q. Did you prepare this screen shot or was it already on
6 the laptop?

7 A. It was recovered off the laptop.

8 Q. And what is this a screen shot of?

9 A. Again, it appears to be a posting from the City of
10 Parma Police Department Facebook page.

11 Q. And what does this post, this screen shot post say?

12 A. Starting at the top it says, "Due to the slow increase
13 of a homeless population in our city, The Parma Police
14 Department is pleased to announce that it will be
15 introducing a new temporary law that will forbid residence
16 of Parma from giving ANY HOMELESS person food, money, or
17 shelter in our city for 90 days. This is in an attempt to
18 have the homeless population eventually leave our city due
19 to starvation. Residents caught giving the homeless
20 population food, shelter, or water will be sentenced to a
21 minimum of 60 days in jail. You have been warned."

22 Q. To your knowledge, is that an actual law that Parma has
23 on its books?

24 A. No, it's not.

25 Q. Was this ever a law on Parma's books, to your

1 knowledge?

2 A. Not for the 31 years that I have been there.

3 Q. Did you do a forensic analysis of any other items?

4 A. Yes. There were some, as I recall, USB memory devices,
5 USB hard drives, that type of thing, a couple flash cards
6 like from cameras that I examined, but there wasn't anything
7 pertinent recovered from them that I recall.

8 Q. You mentioned earlier that there was a Kyocera phone?

9 A. Yes.

10 Q. Did you do a forensic analysis on that?

11 A. Yes.

12 Q. I am going to show you what's been marked as State's
13 Exhibit 3 and 3-B.

14 MS. WOODS: Your Honor, may I approach?

15 THE COURT: You may.

16 Q. Do you recognize State's Exhibits 3 and 3-B?

17 A. State's Exhibit 3 would be the end product I provided
18 to Detective Connor after I processed the Kyocera cell
19 phone. So on here would be the Excel spreadsheet and the
20 files from that phone. And then Exhibit 3-B is like what I
21 did to the Samsung, I isolated the text messages related to
22 this case, eliminated all the personal and unrelated stuff,
23 and compiled it in a sheet for you.

24 Q. I'll take those.

25 Everything that you did a forensic analysis of, do

1 you change any of the data?

2 A. No. The practices involve using write blockers and
3 processes that do not contaminate the evidence that we're
4 examining.

5 Q. So everything that you examined matches exactly the way
6 it appears if we were to plug in these laptops or start up
7 the cell phones?

8 A. Correct. If an independent examiner would take a look
9 at it, they should end up with the same results.

10 Q. How many years have you been doing forensic analysis?

11 A. The cell phones for going on three years now, the
12 computers for two.

13 MS. WOODS: Thank you, Your Honor. No
14 further questions.

15 THE COURT: Okay. Cross-examination?

16 MR. VICK: Thank you, Judge.

17 - - -

18 CROSS-EXAMINATION OF MICHAEL KLEIN

19 BY MR. VICK:

20 Q. Good morning, Detective. How are you?

21 A. Very well, sir. Yourself?

22 Q. You're very well versed and educated in technology,
23 correct?

24 A. I've been trained, yes.

25 Q. You've been trained. I mean, you know a heck of a lot

1 more about this stuff and how to get into phones than I do;
2 is that a fair statement?

3 A. That's probably safe to say, yes.

4 Q. Safe to say. And a lot of your investigation -- strike
5 that.

6 Some of your investigation deals with child
7 pornography, correct?

8 A. Yes.

9 Q. I mean, it's just amazing these days what types of
10 things people hide on cell phones, isn't it?

11 A. Correct.

12 Q. Okay. When did you become involved in this case?

13 A. I was advised of the search warrant that they were
14 executing over at the Defendant's residence the date of the
15 search warrant. I actually stopped by and helped identify
16 items that they would want to recover for further analysis.
17 I think I was coming down to court, so I had to leave before
18 they were done. So that whatever the day of the search
19 warrant would have been my first involvement.

20 Q. So that would have been like March 20th, or the week of
21 the 20th to the 25th, if you recall?

22 A. That sounds accurate.

23 Q. Were you aware that when the search warrant was
24 executed for the residence, that Facebook had already
25 responded to the search warrant that Detective Connor sent

1 to Facebook?

2 A. I was not aware of that.

3 Q. So you weren't aware that Detective Connor already had
4 over 3,000 documents from Facebook?

5 A. No, I was not.

6 Q. Okay. How many items did you analyze?

7 A. As I recall, I'd have to take a look at the original
8 search warrant for the electronic evidence to be a hundred
9 percent accurate, but the ones I was focusing on were the
10 two cell phones, there was a touch pad item that I had to
11 use the Celebrate on because the computer software wouldn't
12 touch it, and the two laptops, and I believe three other
13 items that were classified as flash memory, the USB drives
14 and the flash memory.

15 Q. Were you aware that the majority of those items
16 actually weren't Anthony's?

17 A. I did not establish ownership at that time, no.

18 Q. Gotcha, okay.

19 You made a statement that the software you use goes
20 into a phone or a computer or something that you want to
21 analyze, correct?

22 A. It pulls the information off the phone, yes.

23 Q. And I think you said your software interrogates the
24 cell phone?

25 A. That's a good word.

1 Q. It is a good word, I like it. I got to be honest with
2 you, I've never heard that described that way.

3 But in all of the text messages that you reviewed,
4 like from Anthony, you know, and there were thousands of
5 them, from Anthony, to Anthony, all of those text messages,
6 did you find any use of the N word?

7 A. Not that I recall.

8 Q. And we're all familiar with various racial slurs and
9 epithets, right?

10 A. Yes.

11 Q. Did you find any racial slurs or epithets in there?

12 A. Not that I recall, no.

13 Q. And you looked at thousands of text messages, correct?

14 A. Yes.

15 Q. And for the sake of judicial economy we focused on like
16 March 2nd and 3rd, correct?

17 A. Correct. I --

18 Q. I'm sorry?

19 A. Yes.

20 Q. And I think you took some out that went back to like
21 February or January --

22 A. Yes.

23 Q. -- of 2016?

24 A. Correct.

25 Q. Longer than March 2nd of 2016?

1 A. Correct.

2 Q. When you analyzed the text messages, and you stated you
3 had read all of them, right?

4 A. Yes.

5 Q. Most of 'em?

6 A. Yes.

7 Q. For purposes of --

8 A. I do a lot of scanning to find the relative things,
9 yeah.

10 Q. I didn't read them all either.

11 A. It gets old.

12 Q. Did you find any text messages where Anthony was
13 saying, Go out and tell people to start calling the Parma
14 Police?

15 A. No.

16 Q. Did you find any evidence -- strike that.

17 If there were evidence on the computer or the cell
18 phone that Anthony, and I think we even called it the user
19 or holder of the cell phone, had accessed any of the Parma
20 websites or the Facebook pages, like maybe hacked it or went
21 into it, would you have been able to determine that?

22 A. There should have been some evidence of that, I would
23 think. I've had other cases where I showed people accessing
24 things and copying 'em. It doesn't always show up, but
25 there should have been some evidence of any type of hacking

1 going on.

2 Q. So you have had cases where you did find evidence?

3 A. Yes.

4 Q. And that sometimes maybe they're just good or it just
5 didn't show up on some documents?

6 A. Correct.

7 Q. Or some electronics? I apologize.

8 A. Correct.

9 Q. And you found no evidence of that in this case?

10 A. No.

11 Q. And you looked at two cell phones, correct?

12 A. Yes. The Kyocera and the Samsung, yes.

13 Q. And you noticed, and you even said as you were going
14 through there, there were texts from Anthony or the holder
15 of the phone discussing a serious family illness, correct?

16 A. I recall there was something about a family member
17 being ill, yes.

18 Q. And there were some very personal text messages in
19 there, aren't there?

20 A. Yes.

21 Q. Maybe between friends and family members?

22 A. Yes.

23 Q. And you took the roommate's phone, too, correct?

24 A. Yeah, I believe that was the Kyocera.

25 Q. And the roommate was never arrested, was he?

1 A. Not that I'm aware of, no.

2 Q. And you gave the same interrogation to the roommate's
3 phone?

4 A. Correct.

5 Q. And you did a tablet?

6 A. Yes.

7 Q. Two computers?

8 A. Yes.

9 Q. Did you do all the externals?

10 A. If I was able to. As I recall, I believe one of the
11 game systems didn't have a, basically, a removable memory
12 for me to interrogate, so I couldn't do anything with it.

13 Q. Were there thumb drives?

14 A. Yes. The USB memories?

15 Q. Correct.

16 A. Yes.

17 Q. Did you analyze those?

18 A. Yes.

19 Q. And there was no evidence which, in your professional
20 law enforcement opinion, you thought was pertinent to the
21 detective's investigation?

22 A. Correct.

23 Q. Do you know approximately how many -- I mean, is it
24 gigabytes or terabytes of information you extracted?

25 A. There was a lot. I don't have an exact number for you.

1 Q. That's okay.

2 And at least for purposes of your investigation, you
3 were operating under authority of a validly issued search
4 warrant?

5 A. Correct.

6 Q. And you need a search warrant to get into people's
7 phones like that, correct?

8 A. Or consent. If I got --

9 Q. He didn't consent in this case, did he?

10 A. Not that I'm aware of, no.

11 MR. VICK: Thank you, Your Honor. Nothing
12 further.

13 THE COURT: Okay. Thank you. Redirect?

14 - - -

15 REDIRECT EXAMINATION OF MICHAEL KLEIN

16 BY MS. WOODS:

17 Q. Detective, when you began your forensic analysis of
18 these items, what were you looking for?

19 A. Evidence related to the Facebook page that Detective
20 Connor was investigating, the establishing of it or
21 conversations about it.

22 Q. And did you find such evidence?

23 A. Yes.

24 Q. Were you able to determine from your forensic analysis
25 who set up the page?

1 A. Yes.

2 Q. And who was that?

3 A. The Defendant, Mr. Novak.

4 Q. Do you see -- did you ever meet the Defendant prior to
5 your doing the search warrant?

6 A. No.

7 Q. I'm sorry. Not the search warrant, the forensic
8 analysis?

9 A. No.

10 Q. Did you have any interactions with him after you did
11 the forensic analysis?

12 A. Not that I recall, no.

13 MS. WOODS: Nothing further, Your Honor.

14 MR. VICK: Nothing further, Judge. Thank
15 you.

16 THE COURT: Okay. Thank you.

17 - - -

18 (Thereupon, the witness was excused.)

19 - - -

20 THE COURT: Ladies and gentlemen, we are
21 going to take a ten-minute break at this time. So
22 I'm going to have you back here at 11 o'clock. You
23 are not to discuss this case amongst yourselves.
24 You are not to discuss it with anyone. You are not
25 permitted to have anyone discuss it in your

1 presence. You are not permitted to form or express
2 an opinion on this case until it is finally
3 submitted to you.

4 In addition, you are not to conduct any
5 research of your own. You are not to post anything
6 on Facebook, Twitter, Instagram, SnapChat, whatever
7 means you use to communicate with the outside world
8 through social media. All right?

9 You are not to read any newspaper or any
10 other news accounts of this case as well.

11 All right. I'll see you in ten minutes.

12 All rise for the jury.

13 - - -

14 (Thereupon, the jury was excused
15 from the courtroom).

16 - - -

17 THE COURT: Okay. You may be seated.

18 Anything that we have to put on the record?

19 MS. WOODS: Nothing from the State, Your
20 Honor.

21 THE COURT: Okay.

22 MR. VICK: Nothing from the Defense at this
23 point in time.

24 THE COURT: Okay. So I'll see you in ten
25 minutes.

1 Oh, who's your next witness?

2 MS. WOODS: Our next and final witness, Your
3 Honor, will be Detective Connor. And he'll be long.

4 THE COURT: Okay. Like all day, the rest of
5 the afternoon?

6 MS. WOODS: We have a lot of documents to go
7 through, Your Honor.

8 THE COURT: Okay. And then what's your -- do
9 you know what your schedule is?

10 MR. VICK: I don't right now, to be perfectly
11 honest with you. And I'm not hiding anything. A
12 lot of this is going to come down to how he goes.

13 THE COURT: Okay. So maybe we'll finish with
14 the evidence today and then do closing on Monday.

15 MR. VICK: Yeah.

16 THE COURT: Potentially. Because I intend to
17 go to 5:30 today, so I don't know. Will the
18 detective be on the stand for four, five hours?

19 MS. WOODS: I don't anticipate five hours,
20 but I also don't know how long the cross is going to
21 be.

22 THE COURT: All right. We will see.

23 - - -

24 (Thereupon, a recess was taken.)

25 - - -

1 (Thereupon, proceedings were resumed within
2 the presence of the jury as follows:)

3 - - -

4 THE COURT: All right. You may be seated.
5 You may call your next witness.

6 MS. WOODS: Okay. The State calls Detective
7 Tom Connor.

8 THE COURT: All right. Detective.

9
10 Thereupon, the STATE OF OHIO, to
11 further maintain the issues on its
12 part to be maintained, called as a
13 witness, THOMAS CONNOR, who, being
14 first duly sworn, was examined
15 and testified as follows:

16 All right. You may be seated.

17 And please just make sure you speak loudly
18 and clearly into the microphone. Your seat is not
19 adjustable, but your microphone is.

20 THE WITNESS: I will.

21 THE COURT: Okay. Thank you.

22 - - -
23
24
25

DIRECT EXAMINATION OF THOMAS CONNOR

BY MS. WOODS:

Q. Good morning, Detective.

A. Good morning.

Q. For purposes of our jury, can you please reintroduce yourself, and for purposes of our court reporter, please say and spell your last name and your badge number, please.

A. Sure. My name is Thomas Connor, spelled C-o-n-n-o-r.

I'm a detective with the Parma Police Department, badge number is 764.

Q. How long have you been a detective with the Parma Police Department?

A. Since October of '99.

Q. And where were you employed before that?

A. I was employed with the United States Marine Corps.

Q. Were you ever a patrol officer?

A. I was, yes. I was hired in 1996 and I spent three years on the road in the uniformed patrol division.

Q. Of what agency?

A. Of the Parma Police.

Q. Were you a patrol officer for anywhere else?

A. No.

Q. What training and experience do you have as a police officer?

A. I went to the Ohio State Highway Patrol Academy in

1 1999. When I went to the detective bureau, I received
2 training through OPOTA, the Ohio Peace Officers Training
3 Association. At that particular time, when I went into the
4 detective bureau, I worked in the youth and sex crimes
5 division from 1999 to 2008. During that time I was also a
6 member of the Internet Crimes Against Children Task Force,
7 so you can imagine there's plenty of follow-up training
8 working on sexual crimes with interviewing and interrogation
9 of victims, both child victims, and yet more training in
10 regards to Internet crimes.

11 Q. Were you working on March 2nd of this year?

12 A. I was, yes.

13 Q. And what were you -- what were your plans on March 2nd;
14 did you have any open cases on your docket at that point?

15 A. I did, absolutely. At any given time I have, I would
16 say, 20 to 25 open cases on my desk. Unfortunately, we call
17 them back burner cases, other things take priority. On that
18 particular day, I know that just a day or two before I was
19 working on a case involving an harassment by an inmate, it
20 wasn't probably but a week before that I was working on an
21 aggravated robbery from State and Snow Roads at a Marathon,
22 and I was still working on a case from December of 2015
23 which was a home invasion. So those three really come to
24 mind as cases that were up at the top.

25 Q. Were those your high-priority cases --

1 A. For sure.

2 Q. -- at that time?

3 What types of cases do you usually handle for the
4 Parma Police Department?

5 A. In 2008, as I said, I left the youth and sex crimes
6 division, so now I work in the general felony unit, so we
7 handle all felonies from, you know, your F-5s to your F-1s,
8 your aggravated murders all the way down to felony thefts.

9 Q. Is this different than, Detective Heinz testified that
10 he's in the narcotics branch?

11 A. Yes.

12 Q. What are the differences?

13 A. Clearly, narcotics works drug investigations, sometimes
14 they'll work corruption cases. We work -- I don't work any
15 narcotics cases, so that's a difference. I don't work -- no
16 longer do I work any sexual crime cases. I don't work in
17 the Internet Crimes Against Children Task Force anymore.
18 It's just basic -- you know, not basic felonies, anything
19 other than drugs and sex crimes the general unit handles.

20 Q. And what county is Parma, Ohio located in?

21 A. Cuyahoga County.

22 Q. And what state?

23 A. State of Ohio.

24 Q. At some point during the day of March 2nd, did it come
25 to your attention that there was a fake Parma Police

1 Department Facebook page?

2 A. Yes.

3 Q. How did that come to pass?

4 A. Lieutenant Riley came over to my desk, he advised me of
5 it, and he told me I was assigned to it.

6 Q. Is that typical of assignments?

7 A. Yes. Assignments come from supervisors. Usually we
8 get our assignments in roll call, so I guess this was a
9 little different, but things happen in the course of a day.

10 Q. If a case comes up that has or requires specialized
11 training, are cases then assigned based off of specialized
12 training?

13 A. Typically, yes.

14 Q. Were you made aware of any reason that this case was
15 assigned to you, or was it just that your name was next in
16 the hopper?

17 A. No. My name wasn't in a hopper, but I believe it was
18 assigned to me because of my years of experience working in
19 Internet crimes.

20 Q. What did you do first, once being assigned?

21 A. I was advised of the fake post and I pulled it up
22 immediately, read through it. I had to really figure out
23 what we had here, what was going on. So I went through
24 that. I looked at our, the actual Parma Police Department's
25 Facebook page, and I looked at the two of them, what

1 actually do we have here.

2 MS. WOODS: Your Honor, may I approach?

3 THE COURT: You may.

4 Q. Detective, I'm showing you what has been marked as
5 State's Exhibit 1, do you recognize that?

6 A. I do, yes.

7 Q. And how do you recognize that?

8 A. This is a printed-out copy of the actual Facebook page
9 for the Parma Police Department, the real one.

10 Q. Is what is up on the screen the same as what you have
11 in your hand?

12 A. Yes.

13 Q. And if you're aware, what does the Parma Police
14 Department use their Facebook page for?

15 A. To my knowledge, it's to seek, you know, help from the
16 public. Oftentimes detectives will ask that a video
17 surveillance be posted on there asking for public
18 assistance, has anybody seen or if anybody can identify this
19 person. I know that in reading this and in working this
20 case, I know that we had posted about a civil service exam,
21 things like that.

22 MS. WOODS: Your Honor, may I approach?

23 THE COURT: You may.

24 Q. Detective, I am showing you what has been marked as
25 State's Exhibit No. 10, do you recognize that?

1 A. I do, yes.

2 Q. And how do you recognize that?

3 A. These are the, for lack of a better term, banners, if
4 you will, and the real page is the page on the left, and the
5 fake page that was created is the page on the right, or the
6 banner on the right.

7 Q. And is this an image you captured?

8 A. That's correct.

9 Q. Is this the same page, the fake page, is that how it
10 looked on the day that you captured this image?

11 A. Yes.

12 Q. When you opened the fake page, what did you see?

13 A. Well, right away what jumped out at me was the banner,
14 the patch, the badge, all that appeared to be the same. I
15 did notice the subtle difference with Community instead of
16 Police Station - Government Organization. Then I saw a post
17 that appeared to mirror the same post that we would use, or
18 that, I shouldn't say we, because I don't use it, or I don't
19 post, but either Detective Wells, Detective Kaniecki, or
20 Detective Riley, the same type of posts that they would put
21 on there.

22 Q. In those posts, what -- do you recall what they said?

23 A. I do, yes.

24 Q. What posts do you recall?

25 A. The first one I recall was the Parma Police Department

1 announcing a new law that anybody caught feeding the
2 homeless or doing whatever with the homeless would receive
3 60 days in jail, you have been warned.

4 Q. Do you recall any other posts?

5 A. I do, yes.

6 Q. What other posts do you recall?

7 A. There was a post about -- in fact, I had mentioned it
8 with regards to one of the three authorized users of the
9 Facebook had posted about us giving a civil service exam,
10 and I saw a post about the civil service exam on the fake
11 account, minus a change in a couple words in that entire
12 post.

13 I also saw one in regards to police sponsoring, or
14 something to the effect with regards to teen abortions. I
15 saw one on pedophile reform up at, I believe it was at
16 St. Anthony's where that was going to occur allegedly. And
17 I believe there were a couple others. I don't remember
18 right off the top of my head.

19 Q. What did you do after viewing this page with these
20 posts?

21 A. Sure. I viewed the page, at that point what I did was
22 I sent a preservation letter over to Facebook to preserve
23 this fake account.

24 Q. And what does a preservation letter do?

25 A. It notifies the company that that account is under

1 investigation, to preserve that account so no changes can be
2 made; nothing can be done to do anything to that account the
3 way it is once they receive that preservation letter.

4 Q. Have you used preservation letters in other
5 investigations?

6 A. Yes, numerous.

7 Q. Is this standard on the part of trying to preserve
8 documents?

9 A. Yes.

10 Q. After you sent the preservation letter, what did you do
11 next?

12 A. At that time I met or -- I'm sorry, I also obtained a
13 subpoena through the prosecutor's office for subscriber
14 information for the IP address for that particular account.

15 Q. Is that standard when you deal with Internet crimes?

16 A. Yes.

17 Q. And what did you do then?

18 A. I'm sorry?

19 Q. What did you do next?

20 A. Continued to monitor that. I had printed out different
21 pages, different things going on through the course of the
22 day with regards to this case. The next day I had spoken to
23 our law department, and at that point we applied for a
24 search warrant for the contents, the Facebook contents, so a
25 search warrant could be served upon Facebook.

1 Q. You said you monitored the page throughout the day, did
2 you notice any changes to the page?

3 A. Yes.

4 Q. What type of changes did you notice?

5 A. Initially, and under the URL for the fake page, it
6 said, The City of Parma. Let me make sure I'm seeing this.
7 It said, The City of Parma Police Department. And it wasn't
8 shortly after the first time that I saw that, shortly, I'm
9 saying within an hour or so, maybe two hours, "The" was
10 removed from the banner. You can't change the URL, but the
11 word "The" was removed from the banner.

12 Q. On the official City of Parma Facebook page, does the
13 word "The" appear anywhere in the banner?

14 A. It does not.

15 Q. Did you notice any additional posts come up throughout
16 the day?

17 A. Yes.

18 Q. So as you're monitoring this, you get a search warrant
19 for Facebook; is that correct?

20 A. The next day, that's correct.

21 Q. The next day. Is getting a search warrant for Facebook
22 records standard practice?

23 A. If you're investigating a complaint in regards to
24 Facebook, yes.

25 Q. And what did you do next?

1 A. I prepared the search warrant and affidavit. A copy of
2 each were sent to the law department for review. That was
3 approved through the law department, if you will. I
4 appeared in front of Judge Spanagel, I was sworn in and
5 explained the facts of the case to him, that I had at that
6 particular time, I signed the affidavit, and he signed the
7 affidavit and search warrant.

8 Q. When you get a search warrant, what is standard
9 practice?

10 A. Every search warrant that I've ever applied for is
11 reviewed by the law department, and then once that is
12 okayed, whether there's changes that need to be made or
13 there's things that we need to add or there's oftentimes
14 where they say, you know what, there's not enough here; but
15 once that's approved, then, you know, we appear in front of
16 a judge or a magistrate where we're sworn in, where we
17 explain the case, where they read the affidavit, where we
18 sign the affidavit, and they sign the affidavit and search
19 warrant.

20 Q. And you followed those same procedures for this case?

21 A. Yes.

22 Q. Upon receiving the search warrant, what did you do
23 next?

24 A. Facebook's protocol, I guess it would be protocol, we
25 have to upload that particular search warrant into their

1 system, it's received by them, and then they process it at
2 that point.

3 Q. Did there come a time that you received a response from
4 Facebook?

5 A. Yes.

6 Q. And what type of response did you receive? What
7 records did you seek a search warrant for?

8 A. Sure. I sought records for the fake Facebook page for
9 the Parma Police Department, and I also sought records for
10 Mr. Novak's Facebook page.

11 Q. And how did you land on Mr. Novak?

12 A. Sure. Detective Heinz had come to me earlier, almost,
13 I don't want to say immediately, maybe a half hour after I
14 got assigned to the case. I learned that I should focus in
15 on Mr. Novak as he was the first one to share this page. So
16 I did. Through my investigation I went to his page and I
17 saw the comment of -- I'm trying to remember exactly what
18 the comment was, I am very satisfied by my actions this
19 morning. So I saw that. We went to Mr. Novak's page.

20 Q. I'm going to show you what's been marked as State's
21 Exhibits 17 and 18.

22 MS. WOODS: Your Honor, may I approach?

23 THE COURT: You may.

24 BY MS. WOODS:

25 Q. Do you recognize State's Exhibits 17 and 18?

1 A. I do, yes.

2 Q. And how do you recognize, we'll start with State's
3 Exhibit 17?

4 A. On 17, this is the -- this was on Mr. Novak's personal
5 Facebook page.

6 Q. And was this given to you by Detective Heinz?

7 A. That's correct.

8 Q. And for purposes of the record, what does this show?

9 A. It shows a post by Mr. Novak and then it shows four
10 comments, but one of them including Mr. Novak's comment.

11 Q. Is there anything further down that page that it begins
12 to show?

13 A. Yes.

14 Q. And what is that?

15 A. That's a post, again, under Mr. Novak's page and it
16 says, "Thanks Parma," but then it repeats the story of the
17 homeless.

18 Q. And he is -- is that a shared, is that a shared link
19 that he's -- the story of the homeless?

20 A. Yes.

21 Q. For those that might not be familiar, what is a
22 Facebook share?

23 A. To my knowledge, it's where you share a story, a post,
24 a whatever, from your page and you share it to your friends'
25 pages.

1 Q. Does the person who's sharing that information claim
2 authorship of it during a share?

3 A. No.

4 Q. So it would show where they had gotten the information
5 from?

6 A. I don't know.

7 Q. What is the significance of under where it says,
8 "Thanks Parma," it says "City of Parma Police Department,"
9 if you know?

10 MR. VICK: Objection.

11 THE COURT: Overruled. If you know.

12 MR. VICK: Thank you, Judge.

13 A. I'm sorry, can you repeat that?

14 BY MS. WOODS:

15 Q. If you know, what is the significance of where it says,
16 "City of Parma Police Department"?

17 A. I don't know.

18 Q. And I've also handed you State's Exhibit 18. Let's
19 take a look at State's Exhibit 18. Do you recognize State's
20 Exhibit 18?

21 A. I do, yes.

22 Q. And how do you recognize it?

23 A. It appears to be just a zoomed-in screen shot of
24 State's Exhibit 17.

25 Q. Was this useful information to you in the course of

1 your investigation?

2 A. Yes.

3 Q. And why was it useful?

4 A. Well, again, the comment right at the top, and again,
5 this was brought to my attention by Detective Heinz, that
6 Mr. Novak was the first to share this. When you look at
7 this, "I am just going to say, I woke up and feel very
8 satisfied by my actions right now," that tends to point in a
9 direction --

10 MR. VICK: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q. Did, at some point, during the course of your
13 investigation, did you make a printout of Anthony Novak's
14 page?

15 A. Yes.

16 Q. I am going to show to you what's been marked as State's
17 Exhibits 12 and 13.

18 MS. WOODS: Your Honor, may I approach?

19 THE COURT: You may.

20 Q. Take a look at State's Exhibit 12. Do you recognize
21 State's Exhibit 12?

22 A. Yes.

23 Q. And how do you recognize it?

24 A. This is a printed-out copy of Mr. Novak's personal
25 Facebook page.

1 Q. And did you create this printout?

2 A. Yes.

3 Q. And if you know, when did you create this printout?

4 A. The date at the top left indicates March 2nd, 2016.

5 Q. And the item that we are viewing on the screen is the
6 same as what is in your hand; is that correct?

7 A. It appears to be, yes.

8 Q. Why, in your investigation, did you print out Anthony
9 Novak's personal Facebook page?

10 A. Because I thought it necessary.

11 Q. Was there anything that caught your eye when you
12 reviewed it?

13 A. Yes.

14 Q. And what was that?

15 A. The first post, which was posted to Parma, the fake
16 Parma Police Facebook page, was posted on Mr. Novak's
17 personal page.

18 Q. I'm sorry. Can you see on the screen from where you're
19 sitting?

20 A. I can see it, but not enough to --

21 Q. Let me zoom in a little bit.

22 Is that better?

23 A. Much.

24 Q. So is this the post that you were just referring to?

25 A. Yes, it is.

1 Q. And what is -- is this a share again of the -- what is
2 this a shot of? I'm sorry.

3 A. This is one of the posts, if you will, that appeared on
4 the fake Parma Police Department Facebook page, and then
5 Mr. Novak posted that particular post on his personal page.

6 Q. Were there other such posts on Anthony Novak's personal
7 page?

8 A. I don't recall, without going through it.

9 Q. Do you have the record in front of you?

10 A. I do.

11 Q. Take a moment and refresh your recollection.

12 A. Okay.

13 Q. After reviewing the document, does that refresh your
14 recollection as to if there were other such posts on Anthony
15 Novak's personal page?

16 A. Yes.

17 Q. Were there other -- did Anthony Novak share other City
18 of Parma Police Department posts on his personal page?

19 A. Of the record I just reviewed, no.

20 Q. I've also handed you what's been marked as State's
21 Exhibit No. 13, take a look at that one.

22 Do you recognize State's Exhibit 13?

23 A. I do, yes.

24 Q. And how do you recognize State's Exhibit 13?

25 A. These are the likes. That's a tab under a Facebook

1 page, so these are likes that a particular user has on their
2 page, some do, some don't.

3 Q. I'm showing you what's up on the screen, is that the
4 same document that is in your hand?

5 A. Yes.

6 Q. Why did you search Anthony Novak's page to see who he
7 liked on Facebook?

8 A. I was just trying to make a copy of the entire page,
9 everything that's on his personal page, make a copy of the
10 entire thing.

11 Q. And when did you make such a copy?

12 A. Again, in the upper left it says March 2nd, 2016.

13 Q. And from your review, did you see what or who the
14 Defendant was liking on Facebook?

15 A. Yes.

16 Q. In your review and in your training and experience as
17 an officer, what did this tell you?

18 A. Not much, just that -- I mean, these are pages that he
19 likes; so information gleaned from that, not much.

20 Q. Did you monitor Anthony Novak's page throughout the
21 day?

22 A. Yes.

23 Q. And you also monitored the fake Facebook page
24 throughout the day?

25 A. Yes.

1 MS. WOODS: Your Honor, may I approach?

2 THE COURT: You may.

3 BY MS. WOODS:

4 Q. I am showing you what's been marked as State's,
5 previously marked as State's Exhibit No. 11, do you
6 recognize it?

7 A. I do, yes.

8 Q. And how do you recognize it?

9 A. This, again, is a printed-out copy of Mr. Novak's
10 personal Facebook page.

11 Q. Was this printed at the same time as the old one?

12 A. No. This indicates that it was printed on March 4th,
13 2016.

14 Q. And for purposes of your investigation, why was this
15 relevant?

16 A. I noticed the first comment, if you will, which would
17 have again been March 4th, 2016, stating, "I think I won at
18 Facebook."

19 Q. And that's the zoomed-in version here on the Mondopad?

20 A. That's correct.

21 Q. And why was that relevant to you?

22 A. Again, still part of my investigation in regards to
23 Mr. Novak.

24 Q. While you're monitoring these two pages, what else had
25 you done in the course of your investigation?

1 A. At that particular time, the search warrant had been
2 sent over to Facebook, so really it was a matter of time
3 waiting on those records return. I don't recall anything
4 other than between the 2nd and 3rd as heavy days, if you
5 will.

6 Q. At any time did you ask Facebook to have the fake page
7 taken down?

8 A. Yes, that was included in my preservation letter.

9 Q. When you received -- when did you receive records back
10 from Facebook?

11 A. I believe it was March 18th, 2016.

12 Q. And did you review those records?

13 A. Yes.

14 Q. I am going to show you what's been marked as State's
15 Exhibit 16.

16 MS. WOODS: Your Honor, may I approach?

17 THE COURT: You may.

18 Q. State's Exhibit 16, take a moment to review it.

19 Do you recognize that?

20 A. I do, yes.

21 Q. And how do you recognize that?

22 A. These are a copy of the records I received in regards
23 to the search warrant served upon Facebook.

24 Q. Are those the complete records from Facebook?

25 A. It appears here that this is pages 1 through 130. When

1 I applied for the search warrant, I applied for two
2 accounts, the total was 2,796 pages. So this is the total,
3 this appears to be the total record of the fake Parma Police
4 page.

5 Q. In reviewing those documents, can you tell when the
6 page was created?

7 A. Yes.

8 Q. And when was the page created?

9 A. I apologize. This is going to take me a minute to pick
10 out the exact date and time here.

11 Q. Take your time.

12 A. So we're clear, on the first page -- now, I believe
13 this is -- this is in regards to when Facebook printed this
14 particular record, and here it says March 17th, 2016, that's
15 not when this page was created, but that's the generated
16 information from the Facebook records.

17 Q. That's the responsive date to your search warrant?

18 A. That's correct.

19 Q. What else is on that first page?

20 A. It shows at the top, again, Facebook Business Record,
21 page 1. It lists Service, and it identifies Facebook.
22 Target, I'm not certain what that means. Generated, as I
23 just discussed, that's the date that Facebook generated or
24 printed this out, or sent it. Date range is what was listed
25 in the search warrant.

1 Q. And what date range was that that you had asked for?

2 A. From February 1st, 2016 to March 3rd, 2016.

3 Q. And why did you pick those dates?

4 A. I picked those dates because the incident occurred, or
5 at least we became aware of this on March 2nd, 2016. In
6 every computer case that I've ever worked, we have backed it
7 up, we don't know when -- going into this, we don't know
8 when this was actually started to be created, when he
9 started going down that road.

10 Q. So you arbitrarily picked a date?

11 A. Yes.

12 Q. What else is on that first page?

13 A. Underneath that it says Creator, and it says Anthony
14 Novak. It lists, I believe, a friend ID number. It says
15 Vanity Name, anthony.h.novak. It says Registered,
16 anthony.h.novak@facebook.com. And Email address of
17 sueandhubby@gmail.com.

18 Q. Does that information tell you who created the page?

19 A. No.

20 Q. What does that information tell you?

21 A. That information tells me -- and, again, registered as
22 anthony.h.novak@facebook.com and also an e-mail address, so
23 it gives us as investigators a tool, a road to go down to
24 continue to follow your investigation.

25 Q. When you get Facebook records back -- I'm going to open

1 my copy so I can follow along a little bit.

2 Are the records broken into sections?

3 A. Yes.

4 Q. What sections appear? We'll start with page 1.

5 A. On page 1 of this record, as I just explained from the
6 Service on down to the Email, so that's a particular
7 section. Then the next section, and I have seen this in
8 each and every record from Facebook, they start off with the
9 friends, excuse me, so you'll get pages upon pages upon
10 pages of friends, and then it will go into content.

11 Q. Is there any significance to the order of the friends
12 that you're aware of?

13 A. Not that I'm aware of.

14 Q. And in this case, how many pages of friends are there
15 for this Facebook business record?

16 A. On this particular record, it goes to page 16 and it
17 comes almost all the way down, so almost three-quarters of
18 the way, so almost 16 full pages of friends.

19 Q. And what is the next section?

20 A. The next section, which starts right below friends, is
21 wall posts.

22 Q. And what is a wall post on Facebook, if you are aware?

23 A. I don't know.

24 Q. Is that a section of content that would appear on
25 Facebook?

1 A. Yes.

2 Q. Were you able, after reviewing the records, to
3 determine which posts went up by the page or the
4 administrator of the page?

5 A. Can you repeat that?

6 Q. I'll rephrase my question. It was a bad question.
7 When you look at the section titled wall posts, does it tell
8 you who posted it?

9 A. Yes.

10 Q. And how does it identify who posted it?

11 A. So in the first wall post, as an example, it says,
12 To: City of Parma Police Department, From: -- and in this
13 particular one it says, Cameron Vanderhorst, it lists an ID,
14 the time, and then what the text, what the content is of
15 that, so what the words are that they posted to that
16 particular page.

17 Q. When you reviewed this record when you got it from
18 Facebook, could you determine which posts were made by the
19 page?

20 A. Yes.

21 Q. So if you turn your attention to page 26 of the record;
22 what do you notice?

23 A. On page 26 of this particular record is a post which
24 was the post made by Lieutenant Riley in regards to, this is
25 a fake account, this is a fake Facebook page going around.

1 Q. And what is the text of that post?

2 A. And it states: "The Parma Police Department would like
3 to warn the public that a fake Parma Police Facebook page
4 has been created. This matter is currently being
5 investigated by the Parma Police Department and Facebook.
6 This is the Parma Police Department's official Facebook
7 page. The public should disregard any and all information
8 posted on the fake Facebook account. The individuals who
9 created this fake account are not employed by the police
10 department in any capacity and were never authorized to post
11 information on behalf of the department."

12 Q. Is that the same warning that -- you mentioned that
13 Lieutenant Riley issued a warning. What did Lieutenant
14 Riley's warning say, if you recall?

15 A. The same thing.

16 Q. Was that copied word for word, to your knowledge?

17 A. To my knowledge, yes.

18 Q. When Facebook sends you records, how are they ordered
19 in time, is it newest first or oldest first?

20 A. Oldest is last. So newest first.

21 Q. So this would have been a later post or a newer post in
22 the day?

23 A. Correct.

24 Q. So to follow, this is a reverse chronological order?

25 A. Yes.

1 Q. So if we were to follow chronologically, we would have
2 to start at the back of the records and work our way
3 forward?

4 A. Yes.

5 Q. What was the first post that you became aware of?

6 A. I recall it being the homeless post.

7 Q. If you turn to page 48 of the record from Facebook,
8 what is that? What is on that page?

9 A. On page 48 is the post regarding the homeless.

10 Q. And what does, what is the text of that post?

11 A. And it states: "Due to the slow increase of a homeless
12 population in our city, the Parma Police Department is
13 pleased to announce that it will be introducing a new
14 temporary law that will forbid residence of Parma from
15 giving ANY HOMELESS person food, money, or shelter in our
16 city for 90 days. This is in an attempt to have the
17 homeless population eventually leave our city due to
18 starvation. Residents caught giving the homeless population
19 food, shelter, or water will be sentenced to a minimum of 60
20 days in jail. You have been warned."

21 Q. And to your knowledge, did the City of Parma have a law
22 like this on its books?

23 A. No.

24 Q. Has there ever been a law in the City of Parma like
25 this on the books?

1 A. Not since I've been employed there.

2 Q. Working our way backwards, the next post is on page 45.
3 Can you describe what is on page 45?

4 A. Yes. There was another post that was posted to this
5 fake account.

6 Q. What is the text of that post?

7 A. And that states: "POLICE OFFICER City of Parma. The
8 Parma Civil Service Commission will conduct a written exam
9 for basic Police Officer for the City of Parma to establish
10 an eligibility list. The exam will be held on March 12th,
11 2016. Applications are available February 14th, 2016
12 through March 2nd, 2016. Parma is an equal opportunity
13 employer but is strongly encouraging minorities to not
14 apply. The test will consist of a 15 question multiple
15 choice definition test followed by a hearing test. Should
16 you pass you will be accepted as an officer of the Parma
17 Police Department. By order of Parma Civil Service
18 Commission John L. Kirk, Jr., Chairman Timmy Baycock, Dan
19 Coffee. An Equal Opportunity Employer."

20 Q. To your knowledge, and if you know, was Parma offering
21 a civil service exam?

22 A. I do recall -- yes, I do recall that being on our real
23 Facebook page.

24 Q. And do you recall what the original post said off of
25 the real Parma Police Department page?

1 A. You know, absolutely word for word, no, but very
2 similar to what was posted here on the fake page.

3 Q. Do you still have Exhibit 1 in front of you?

4 I know you have a lot of paper up there. I can take
5 some of it, if necessary.

6 MS. WOODS: Your Honor, may I approach?

7 THE COURT: You may.

8 A. I do, yes.

9 Q. Take a moment to review State's Exhibit 1.

10 A. Okay.

11 Q. Is there a post about a civil service exam?

12 A. Yes, there is.

13 Q. And what is the text of the real civil service exam?

14 A. In this particular text, and this is dated February
15 22nd, "Police Officer City of Parma. The Parma Civil
16 Service Commission will conduct a written exam for basic
17 Police Officer for the City of Parma to establish an
18 eligibility list. The exam will be held on March 12th,
19 2016. Applications are available February 14th, 2016
20 through March 2nd, 2016. Parma is an equal opportunity
21 employer and strongly encourages minorities to apply.
22 Applications and further information obtainable at the Civil
23 Service Office located in Memorial Hall directly" -- and
24 then it cuts off.

25 Q. So the post on the fake page, what is significant about

1 that, in your training and experience as an officer?

2 A. Sure. There's a couple things that were changed on the
3 post on the fake page. On the real page it says here that,
4 Parma is an equal opportunity employer and strongly
5 encourages minorities to apply. On the fake page it says,
6 Parma is an equal opportunity employer but is strongly
7 encouraging minorities to not apply.

8 Other than -- other than that, the only thing, and,
9 again, this is cut off here, but I see the difference, those
10 are not our civil service -- I'm sorry -- our, yeah, our
11 civil service commission, those are not the names of the
12 commissioners of the civil service in our city.

13 Q. Without a close reading of that, do they look similar?

14 A. Yes.

15 Q. We'll move on to the next post on the fake page, which
16 is on Facebook's record, which is State's Exhibit 16, page
17 44. Do you see the post?

18 A. I do, yes.

19 Q. What is the text of that post?

20 A. It states, "We have forgotten to post that on September
21 30th, 2015 at approximately 10 a.m. the Parma Subway
22 Sandwich Shop located at 5890 Broadview Rd. was robbed at
23 knife point. The white male offender got away with a small
24 amount of money and did not harm the clerk. Moments after
25 an unrelated African American women was seen loitering for

1 over 20 minutes in front of the store despite their no
2 loitering policy. If you have any information regarding
3 this African American womans whereabouts please contact the
4 City of Parma Police Department so that she may be brought
5 to justice. This is the best still photo we have of the
6 offender. Mentor Police and Middleburg Hts. Police have
7 reported similar loitering offenses which may be the same
8 female. The Parma Police Department is seeking assistance
9 identifying the individual in the picture. Please contact
10 Det. Joe Tremble."

11 Q. Was there an incident in Parma -- was there a similar
12 post on the Parma Police Department page that is an official
13 post?

14 A. Yes.

15 Q. So referring back to State's Exhibit 1, what is the
16 text of that post?

17 A. It states, "On September 30, 2015 at approximately
18 10:00 a.m. the Parma Subway Sandwich Shop located at 5890
19 Broadview Rd. was robbed at knife point. The white male
20 offender got away with a small amount of money and did not
21 harm the clerk. These are the best still photos we have of
22 the offender. Mentor Police and Middleburg Hts. Police have
23 reported similar robberies which may be the same male. The
24 Parma Police Department is seeking assistance identifying
25 the individual in the pictures. Please contact Det. Joe

1 Duganier at (440)887-7337, or joseph.duganier@
2 parmajustice.net."

3 Q. What was significant about the fake post?

4 A. What's significant about the fake post is that
5 everything was copied over but just a couple subtle changes,
6 and then putting in there about this African American female
7 loitering in front of the business. That's not on our real
8 post, but this is what was on the fake post. So the story
9 reads true up until that part. Then we get into Parma
10 Police is seeking information identifying the individual.
11 We do not have a Joe Tremble, but we do have a Joe Duganier,
12 who's a detective.

13 Q. Would the detective bureau investigate a woman
14 loitering?

15 A. No.

16 Q. What types of crimes would the detective bureau
17 investigate?

18 A. Again, going back to what I said initially, we have a
19 narcotics division, we have a youth and sex crimes division,
20 we have a general felony unit who goes from felonies, so
21 felony five all the way up to felony one.

22 Q. Would aggravated robbery be one of those felonies that
23 you would investigate?

24 A. Yes.

25 Q. In looking at these Facebook posts, do they give a time

1 that they're posted?

2 A. On the official records from Facebook, so -- again, the
3 records that Facebook provided in regards to the search
4 warrant, yes.

5 Q. And what -- we'll stay with the robbery. What is the
6 date and time of that post?

7 A. It said, "posted 2016-03-02, 05:03:15 UTC."

8 Q. And what does that string of numbers mean?

9 A. To me that means it was posted at 5:03:15 a.m.,
10 universal time code.

11 Q. On what day?

12 A. On March the 2nd, 2016.

13 Q. Are you familiar with universal time code?

14 A. Yes.

15 Q. How does that translate to eastern standard time?

16 A. Well, it's been awhile, but we used to refer to it in
17 the military as Zulu time, but that's how, to my knowledge,
18 that is like zero time, if you will; so we on the east coast
19 are X-amount of hours behind Zulu time.

20 Q. Do you know the exact number of hours behind?

21 A. I don't.

22 Q. Does each post have a time code on it?

23 A. Yes.

24 Q. So you can see the exact time frame when it is posted?

25 A. Yes.

1 Q. We'll move on to the next post. The next post appears
2 on page 36.

3 Do you see the post?

4 A. I do, yes.

5 Q. And what is the time of that post?

6 A. The time of the post is 16:04:11 UTC.

7 Q. And just to be clear, so that the 2016-03-02 is the
8 date?

9 A. Yes.

10 Q. And the 16:04:11 UTC is the time?

11 A. Yes.

12 Q. And UTC again is what?

13 A. Universal time code.

14 Q. What is the text of that post?

15 A. It states: "The Parma Police Department & Parma
16 Auxiliary Police Food Drive to benefit teen abortions will
17 take place on Saturday. We will be giving out free
18 abortions to teens using an experimental technique
19 discovered by the Parma Police Department. All teens must
20 bring a note from their parent to be part of the experiment.
21 The abortions will be held Saturday 4/19/2016 from noon to
22 4pm in a police van in the parking lot at Giant Eagle (7400
23 Broadview Rd.)"

24 Q. Is 7400 Broadview Road an actual address in Parma?

25 A. It is, yes.

1 Q. And what is at that address, if you know?

2 A. Giant Eagle.

3 Q. Has Parma ever conducted teen abortions, that you are
4 aware of?

5 A. Never.

6 Q. Has the police ever offered teen abortions?

7 A. Never.

8 Q. Has the police department ever done a food drive?

9 A. Yes.

10 Q. If you know, when was the food drive offered by the
11 Parma Police?

12 A. Without reading the Facebook record, I don't know.

13 Q. Does it appear in the Facebook record?

14 A. I believe it does, yes.

15 Q. If you turn your attention to State's Exhibit 1, is it
16 in there?

17 A. It is, yes.

18 Q. And what does that post there say?

19 A. It states, "The Parma Police Department & Parma
20 Auxiliary Police Food Drive to benefit the Parma Hunger
21 Center will take place on Saturday 12/19/2015 from noon to
22 4pm at Giant Eagle (7400 Broadview Rd.) Non-perishable food
23 & cash donations will be accepted."

24 Q. What is the significance of the fake post?

25 A. Well, again, the story was taken from the real page,

1 posted to the fake page with changes made to the real story.

2 Q. We'll move to page 30 of the Facebook business record.

3 Is there a post that appears on page 30?

4 A. There is, yes.

5 Q. What is the date and time of that post?

6 A. It states: 2016-03-02, time 17:41:05 UTC.

7 Q. And so that would be March 2nd, 2016 at -- excuse me --
8 17:41?

9 A. Yes.

10 Q. And what does the text of that post say?

11 A. And it states: "Update: The City of Parma Police
12 Department will enact a Pedophile Reform event outside of
13 St. Anthony Of Paduas Church on 5-1-16 in an attempt to
14 reform pedophiles to normality. We will have multiple
15 learning stations including a 'No means no' station filled
16 with puzzles and quizzes. Anyone who passes all of the
17 stations will be removed from the sex offender registry and
18 accepted as an honorary police officer of the Parma Police
19 Department. Have fun out there!"

20 Q. Does Parma offer such programs?

21 A. No.

22 Q. Would Parma accept somebody who passes a course on not
23 to be a sex offender onto their police department?

24 A. No.

25 Q. And the post time is 17:41?

1 A. That's correct.

2 Q. 17:41 -- 17 doesn't appear on a standard clock, does
3 it?

4 A. No.

5 Q. How would you figure out what time 17 is?

6 A. It's 5:41 p.m.

7 Q. So that is -- they use a -- Facebook then uses a
8 24-hour format?

9 A. That's right.

10 Q. There is only a couple more posts.

11 Going to page 26, I believe we reviewed this post
12 already, but I want to be sure. What is the date and time
13 of that post?

14 A. It states here: 'Posted 2016-03-02, at 21:52:29 UTC.

15 Q. And what is the text of this post?

16 A. And it states: "The Parma Police Department would like
17 to warn the public that a fake Parma Police Facebook page
18 has been created. This matter is currently being
19 investigated by the Parma Police Department and Facebook.
20 This is the Parma Police Department's official Facebook
21 page. The public should disregard any and all information
22 posted on the fake Facebook account. The individuals who
23 created this fake account are not employed by the police
24 department in any capacity and were never authorized to post
25 information on behalf of the department."

1 Q. And I believe we discussed this post already. Was this
2 posted -- was this the real Parma Police Department Facebook
3 page?

4 A. This was posted on the real page by Lieutenant Riley.

5 Q. And it also appeared on the fake page?

6 A. That's correct.

7 Q. And then, I believe, we've already discussed this post
8 as well, on page 19. Do you see the post on page 19?

9 A. I do, yes.

10 Q. What is the date and time?

11 A. It states here: 2016-03-03, at 00:59:41 UTC.

12 Q. And 00 doesn't appear on a clock, what time would that
13 be?

14 A. That is 59 minutes after midnight.

15 Q. And UTC is not the same as eastern standard time?

16 A. It is not.

17 Q. And what do we here in Cleveland, Ohio use?

18 A. Eastern standard time.

19 Q. And what is the text of that post?

20 A. And it states: "Parma: Tuesday will be our official
21 stay inside and catch up with the family day in Parma! The
22 Parma Police Department has set this day to allow families
23 to come together in an effort to reduce future crime by
24 having children have well balanced communication with their
25 families. Anyone's seen outside their home from the hours

1 of 12pm to 9pm will be arrested. Thank you."

2 Q. And I know we jumped a lot of pages at a time, what
3 fills the rest of the page?

4 A. Comments posted by other users.

5 Q. Without having to read all of them, because there's a
6 lot of comments, do the comments fall into any particular
7 types of comments?

8 A. Oh, sure.

9 Q. What types would you classify them as?

10 A. I would say the first classification is where there
11 were comments that, I believe it's funny. There's other
12 commenters who are appalled that the Parma Police are doing
13 this. And then there's, I would say, commenters who believe
14 that this is real, this is really going on.

15 Q. Did there come a time that you got complaints about
16 what was posted on this fake page?

17 A. Yes.

18 Q. And how did those come to pass?

19 A. There was calls placed to our dispatch center. After
20 talking with our law department, I was made aware that there
21 was calls and emails that were made to both the law
22 department and the safety department, and to my knowledge,
23 Lieutenant Riley received emails also.

24 Q. Did you receive any emails or calls?

25 A. Directly, no.

1 Q. Do you have access to the call logs from the dispatch
2 center?

3 A. Yes.

4 Q. Were you able to log in and find all of those calls?

5 A. I was, yes.

6 Q. Would you be able to recognize them as calls that you
7 had saved from the dispatch center?

8 A. Yes.

9 Q. I am going to show you what's been marked as State's
10 Exhibit 9.

11 MS. WOODS: Your Honor, may I approach?

12 THE COURT: You may.

13 Q. Do you recognize State's Exhibit 9?

14 A. Yes, I do.

15 Q. And how do you recognize it?

16 A. This is a -- when I logged into the dispatch system, if
17 you will, I was able to take the recorded calls from that
18 day that were relevant to this case and then save it to a
19 file and then copy them to a disk.

20 Q. Do you know how they are titled?

21 A. No.

22 Q. Did you make any notes that would tell you how they
23 were titled and saved?

24 A. Yes.

25 Q. If I showed you your notes, would that help refresh

1 your recollection?

2 A. Yes.

3 MS. WOODS: Your Honor, may I approach?

4 THE COURT: You may.

5 Q. I'm showing you what's been marked as State's Exhibit
6 34, do you recognize that?

7 A. I do, yes.

8 Q. And how do you recognize that?

9 A. These are my handwritten notes that I wrote down when I
10 was taking the calls from the system and saving it to a
11 folder.

12 Q. And do they tell you what the title of the call would
13 be?

14 A. Not a title so much; I wrote down the date, the time,
15 and what console that the call came in to, and the duration
16 of that call.

17 Q. So let's look at console No. 3.

18 (Thereupon, playing CD)

19 Q. Do you recognize that call?

20 A. Yes.

21 Q. And how do you recognize it?

22 A. I've heard it before.

23 Q. Is this one of the calls that you pulled off of the
24 system?

25 A. Yes.

1 (Thereupon, playing CD)

2 Q. Is that the duration of the call?

3 A. Yes.

4 Q. And how many calls were there in total?

5 A. Ten. Eleven.

6 Q. Now we'll go to console 4A, do you recognize this call?

7 (Thereupon, playing CD)

8 A. Yes.

9 Q. And how do you recognize it?

10 A. Without listening to it right now, but I have it
11 written down in my notes.

12 (Thereupon, playing CD)

13 Q. Was that the entirety of that call?

14 A. No, I thought there was more to that call.

15 (Thereupon, playing CD)

16 Q. Do you recognize that?

17 A. Yes.

18 Q. And how do you recognize that?

19 A. That would be the second half of the phone call.

20 (Thereupon, playing CD)

21 Q. Is that the duration of that call?

22 A. Yes.

23 Q. What is the date and time of that call?

24 A. That was March 2nd, 2016, at 11:33:51.

25 Q. When did you start your investigation?

1 A. I'm sorry. I believe that you said that was 4B; is
2 that correct?

3 Q. 4A and 4B.

4 A. Okay. And I apologize, I read you 4C. So to correct
5 the record, March 2nd, 2016, at 10:24:28.

6 Q. And what time did the call come in on Console 3?

7 A. That was March 2nd, 2016, at 9:32:11.

8 Q. What time were you assigned to start investigating
9 this?

10 A. It was between 8:30 in the morning and 9 o'clock in the
11 morning.

12 Q. And what time do you usually start?

13 A. 8 a.m.

14 Q. Look at console 4C. Is this also a call that you
15 pulled in relation to this case?

16 A. Yes, it is.

17 Q. And what is the date and time on this call?

18 A. That's March 2nd, 2016, at 11:33:51.

19 (Thereupon, playing CD)

20 Q. Do you recognize this?

21 A. I do, yes.

22 Q. And how do you recognize this?

23 A. Because I've listened to it before and I, again,
24 downloaded it from the system to a folder to the disk.

25 (Thereupon, playing CD)

1 Q. Is that the duration of the call?

2 A. Yes.

3 Q. And how long is that call?

4 A. Again, that was 4D or 4C?

5 Q. 4C.

6 A. That was 55 seconds.

7 Q. And these are all part of State's Exhibit 9, they're
8 all on the disk you prepared, correct?

9 A. Yes.

10 (Thereupon, playing CD)

11 Q. This is console 4D. Is that a call that you prepared?

12 A. Yes.

13 Q. And what is the date and time on this call?

14 A. That's March 2nd, 2016, and that's at 11:37:18.

15 Q. Do you recognize the call, that brief second that was
16 played?

17 A. Not without hearing the whole call.

18 (Thereupon, playing CD)

19 Q. Is that the complete call?

20 A. Yes.

21 Q. Do you recognize it?

22 A. Yes, I do.

23 Q. And how do you recognize it?

24 A. Again, another call that I listened to and I saved to a
25 folder and saved it to the disk.

1 Q. We're on console 4E.

2 (Thereupon, playing CD.)

3 Q. Do you recognize this?

4 A. Yes.

5 Q. And how do you recognize this?

6 A. Because I believe it is a dispatcher contacting one of
7 the shift supervisors.

8 Q. Is this a call that you downloaded from the system and
9 put on the disk?

10 A. That's correct.

11 Q. This is also part of State's Exhibit 9?

12 A. Yes.

13 Q. And what time was this?

14 A. That was, again, March 2nd, 2016, at 11:38:38.

15 (Thereupon, playing CD)

16 Q. Is that the complete call?

17 A. Yes, it is.

18 Q. And what time was that at?

19 A. That, again, was at 11:38:38.

20 Q. What is going on at your end while these calls are
21 coming in?

22 A. Well, again, I got notified of this, or I got assigned
23 to this case between 8:30, 9 o'clock in the morning, so I'm
24 clearly working on trying to figure out what we have here,
25 what's going on, while these calls are coming in during that

1 time period.

2 Q. Were you working on any of your other active cases at
3 this time?

4 A. No.

5 Q. What was your primary responsibility then on March
6 27nd?

7 A. After I got assigned to this case, it was this case,
8 that was the primary thing.

9 Q. I'm going a little cross-eyed over here.

10 Console 4E, is that also a call you pulled?

11 A. Yes.

12 Q. I'm sorry. Console 4F, we just listened to E.

13 A. 4F, yes.

14 Q. Console 4F, what time was that at?

15 A. That was at 11:42:22.

16 Q. And if I played it, would you recognize it?

17 A. Yes.

18 (Thereupon, playing CD)

19 Q. And how do you recognize this?

20 A. Because I have heard it before.

21 Q. And that's -- not to beat a dead horse, but you were
22 the detective assigned?

23 A. Yes, I was.

24 THE COURT: All right. I think this is a
25 good place to stop for our lunch break. So, ladies

1 and gentlemen, at this time we're going to go to
2 lunch. I'm going to have you back at about 20 after
3 1, and we will start at 1:30.

4 Again, you are not to discuss this case
5 amongst yourselves. Do not permit anyone to discuss
6 it with you or in your presence. Do not form or
7 express an opinion on this case until it is
8 submitted to you. Again, you are not permitted to
9 read any media or newspaper accounts of this case.
10 You are not permitted to post anything on Facebook,
11 Twitter, SnapChat, Instagram, whatever means you use
12 to communicate with the outside world through social
13 media. All right. Do you understand?

14 THE JURY: Yes.

15 THE COURT: Okay. Have a great lunch. I'll
16 see you in an hour. All rise for the jury.

17 - - -

18 (Thereupon, the jury was excused.)

19 - - -

20 THE COURT: Okay. You may be seated. And I
21 will see you back here in about -- you-all, let's
22 say 1:15, because I would like you to go over the
23 jury instructions. All right?

24 MR. VICK: On that, Your Honor, we had
25 prepared late last night and filed this morning --

1 we believe, based on the evidence that's been
2 presented so far, pursuant to Criminal Rule 30, as
3 well as Supreme Court of Ohio precedent, that this
4 case requires a jury instruction on the First
5 Amendment. And we had filed a motion for a proposed
6 jury instruction with a drafted jury instruction on
7 the First Amendment, based on the facts of this case
8 as they've already come in.

9 MS. WOODS: Your Honor, a copy was handed to
10 me just prior to Detective Connor taking the stand.
11 The State has not had a chance to fully read, nor
12 research what was being proposed. The State
13 requests a little bit of time to get through this
14 and do our own research and, if needed, do a written
15 response.

16 THE COURT: And, obviously, I'm being handed
17 a copy of this right before we take a lunch break on
18 day two of our trial as well. So I have not had an
19 opportunity to review it. All right. So you can
20 also review this over the lunch break. All right?

21 MR. VICK: Thank you.

22 MS. WOODS: Thank you, Your Honor.

23 - - -

24 (Thereupon, the luncheon recess was taken.)

25 - - -

1 THURSDAY AFTERNOON SESSION, AUGUST 11th, 2016

2 THE COURT: Okay. You may be seated.

3 All right. The detective may resume his
4 position. And I will remind you that you are still
5 under oath.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: And you may proceed.

8 MS. WOODS: Thank you, Your Honor.

9 - - -

10 DIRECT EXAMINATION OF THOMAS CONNOR (Continued)

11 BY MS. WOODS:

12 Q. Detective, when we left off before the lunch break we
13 were reviewing 9-1-1 calls, or the calls that came into the
14 non-emergency dispatch line; is that correct?

15 A. Yes, it is.

16 Q. To your knowledge, is there a difference between the
17 9-1-1 number and the non-emergency dispatch line number?

18 A. 9-1-1 is that -- I think we all know what that is,
19 that's emergency calls only. Typically somebody will call
20 the 1234 number for something other than an emergency.

21 Q. You said the 1234 number, do you know that number
22 offhand?

23 A. Yes.

24 Q. And what is that number?

25 A. It's 440-885-1234.

1 Q. And those calls are recorded as well?

2 A. Yes, they are.

3 Q. And that's where these calls have all been pulled from?

4 A. Yes.

5 Q. If memory serves me correct, we left off on console 4-F
6 on one of the calls, is that where your memory is as well?

7 A. Yes.

8 Q. So we move on to console 4G, did you pull that call?

9 A. I did, yes.

10 Q. If I played it for you, would you be able to recognize
11 it?

12 A. Yes, I would.

13 Q. When was the date and time of this call?

14 A. March 2nd, 2016, 12:48:27.

15 (Thereupon, playing CD)

16 BY MS. WOODS:

17 Q. Detective, is that the entirety of the call?

18 A. It is, yes.

19 Q. Console 4H, is that also a call that you pulled?

20 A. Yes, it is.

21 Q. And what was the date and time of this call?

22 A. March 2nd, 2016, 9:21:10.

23 (Thereupon, playing CD)

24 Q. Detective, is that the entirety of the call?

25 A. It is, yes.

1 Q. We'll move on to console 5A, is that also a call that
2 you heard, you'd recognize it if you heard it?

3 A. Yes.

4 (Thereupon, playing CD)

5 BY MS. WOODS:

6 Q. Detective, do you recognize that call?

7 A. I do.

8 Q. How do you recognize that call?

9 A. Again, another one of the phone calls that I listened
10 to and downloaded from the system to a disk.

11 Q. And the last one is console 5B, did you pull this call
12 as well?

13 A. Yes.

14 Q. What is the date and time of the call?

15 A. March 2nd, 2016, 7:40:16.

16 (Thereupon, playing CD)

17 Q. Detective, is that the entirety of that call?

18 A. I don't believe so.

19 Q. Reviewing the contents of the disk, do you see any
20 other phone calls that were brought in?

21 A. No.

22 Q. Or do you have any others in your notes?

23 A. No.

24 Q. Did that call just get cut off and the remainder did
25 not get recorded?

1 A. I don't know what happened to the call. Clearly that
2 wasn't the end of the call from what we heard, but if that's
3 what was on the system, that's all I could download.

4 Q. So by the time all of these calls come in, Detective,
5 you were already assigned to start investigating; is that
6 correct?

7 A. Yes.

8 Q. If you can recall, how many open cases did you have on
9 your docket or on your caseload when this came in?

10 A. As I stated earlier, at any given time there's 20, 25
11 cases. I know that there were three higher priority cases
12 that I was working on at the time.

13 Q. Because of your reassignment onto this case and this
14 becoming high priority, did you have to move or rearrange
15 your schedule at all?

16 A. I did, yes.

17 Q. What did you have to do?

18 A. In particular, I was working on the case that I
19 mentioned earlier in regards to a home invasion. There was
20 a defendant that we were trying to obtain buccal swabs from.
21 In fact, we had obtained a warrant a month earlier that he
22 refused to comply with the warrant, and I was supposed to
23 come down that particular day and get the buccal swabs and
24 the consent, and I had to switch it from that day to that
25 next Friday.

1 Q. And what is a buccal swab?

2 A. It's just a cotton swab and it ultimately gets
3 submitted to BCI for DNA testing.

4 Q. Were you previously scheduled to take that buccal swab
5 on March 2nd?

6 A. Yes, I was.

7 Q. And were you able to obtain the buccal swab on March
8 2nd?

9 A. I was not.

10 Q. What date were you able to obtain that buccal swab?

11 A. On March 5th.

12 Q. You had mentioned earlier that you had received
13 numerous pages from Facebook. We had looked at State's
14 Exhibit 16 as it relates to the pages as a result of the
15 fake City of Parma Facebook page. Did you also receive
16 pages from Anthony Novak's page?

17 A. I did, yes.

18 Q. And if you recall, how many pages from the official
19 record did you receive there?

20 A. That would be approximately 2500 pages.

21 MS. WOODS: Your Honor, with this large
22 number of exhibits, may I use this small table for
23 the detective?

24 THE COURT: You may.

25 MS. WOODS: Thank you.

1 Q. Detective, we're showing you what has been marked as
2 State's Exhibit No. 20, do you recognize this voluminous
3 file?

4 A. As it is here, I'm guessing that's the 2500 pages,
5 approximately, of Mr. Novak's personal Facebook account.

6 Q. Did you take the time to read that record?

7 A. I did, yes.

8 Q. In that record, did you see any statements from the
9 Defendant about creating this fake Facebook page?

10 A. I did, yes.

11 Q. If you could, give us a sampling from the record as to
12 what -- if you need to pick through the record, go ahead.
13 I've marked out some pages. That should be --

14 Do you recall reading that section?

15 A. I do, yes.

16 Q. What pages are you looking at of the entire record?

17 A. What I have with me here is page 2381 through 2386.

18 Q. And in that section, what is it?

19 A. These are comments, if you will, but it's Mr. Novak
20 communicating with other users, Facebook users.

21 Q. Is it a messaging service similar to instant message?

22 A. Yes.

23 Q. And what is the nature of those, of that message?

24 A. Well, on page 2381 a person by the name of Ben Palmer
25 sent a message to Mr. Novak, pardon me, and the body of

1 that, so that's the content of what was sent, says: "Is
2 that your page - the City of Parma police dept. page?"

3 Mr. Novak sends a reply to Mr., or Ben Palmer, and
4 the body of that is, "Yes haha."

5 Q. Do they have a discussion about the page throughout
6 those records, those pages of the record?

7 A. Yes.

8 Q. In reviewing that section, is there anything else that
9 the Defendant says that would stand out to you?

10 A. Yes. Pardon me. On page 2383 Ben Palmer sends to
11 Mr. Novak, "Not sure if this is stepping into criminal
12 activity or not." Again, a second message sent from Ben
13 Palmer to Mr. Novak, "but I have an idea." Mr. Novak
14 responds to Ben Palmer with, "Hahah what is it."
15 Mr. Palmer -- or I'm sorry, Ben Palmer sends to Mr. Novak,
16 "just make a carbon copy of the post they just made...and
17 switch it around."

18 Ben Palmer sends another one to Mr. Novak, "so
19 basically you're calling their page an imposter."

20 Q. Detective, which post, if you can tell from that
21 snippet, is the Defendant and this Mr. Palmer character
22 referring to?

23 A. The record shows that it would be referring to the
24 announcement that Lieutenant Riley made with, This is a fake
25 Facebook account.

1 Q. And does the Defendant post Lieutenant Riley's warning
2 to his fake Facebook page?

3 A. Yes.

4 Q. We'll continue on to another section of the record
5 there.

6 Detective, do you recall reading that section of the
7 records provided by Facebook?

8 A. I do, yes.

9 Q. And what pages are those?

10 A. Hold on a second. This is page 993 and page 994.

11 Q. And in reviewing those, are there any statements from
12 the Defendant in those pages as it relates to the fake Parma
13 Police Department Facebook page?

14 A. Yes.

15 Q. And what are those statements?

16 A. I'm just going to start out at the top of the page, and
17 he is now communicating with a person by the name of Danny
18 Rock. Mr. Novak is communicating with a person by the name
19 of Danny Rock. And what we see on the first one, 993, is,
20 "hahah." Danny Rock sends to Mr. Novak, "People believe
21 it." Mr. Novak responds to Danny Rock, "it has 20 shares
22 and only 3 of them are my friends." Mr. Novak again sends
23 to Danny Rock, "Yeah the ones who figured it out I just
24 deleted there posts haha." Danny Rock sends to Mr. Novak,
25 "Ok lol."

1 Q. I'll pause you right there, Detective. The Defendant
2 told his friend in this message that he is deleting what, if
3 you can tell?

4 A. And, again, it says, "Yeah the ones who figured it out
5 I just deleted there posts haha."

6 Q. Can you tell what was figured out?

7 MR. VICK: Objection.

8 THE COURT: That would be sustained.

9 BY MS. WOODS:

10 Q. Detective, drawing your attention to State's Exhibit
11 16, in State's Exhibit 16, are there posts in that that call
12 this a fake page?

13 A. Yes.

14 Q. And can you tell from the official Facebook record if
15 posts have been deleted, or which posts have been deleted?

16 A. No.

17 Q. And why is that?

18 A. Well, posts that were deleted prior to Facebook
19 receiving my preservation letter, they're gone, they're not
20 there.

21 Q. And once the preservation letter was sent, what does
22 that accomplish again?

23 A. It lets the company know to preserve that account
24 exactly the way it is, that nothing more is to be done with
25 that account as far as changes being made or, you know,

1 deletions or anything like that.

2 Q. So if there had been comments, if you know, if there
3 had been comments deleted after the preservation, would they
4 show up in the official Facebook record?

5 A. Can you say that again?

6 Q. If you know the answer. If comments were deleted after
7 you sent the preservation letter, would they show up in that
8 official record?

9 A. I don't know.

10 Q. We'll turn our attention back to State's Exhibit
11 No. 20, the large voluminous file.

12 Did you send a preservation letter for Mr. Novak's
13 account as well?

14 A. I did, yes.

15 Q. Detective, what pages are you holding in your hand?

16 A. I have pages 156 through 163.

17 Q. Did you review those documents before today?

18 A. Yes.

19 Q. Did you review them in the course of your
20 investigation?

21 A. Yes.

22 Q. Do those contain any statements from the Defendant?

23 A. Yes.

24 Q. Do they relate to the creation of the fake Parma Police
25 Department Facebook page?

1 A. Yes.

2 Q. Would you give us a short snapshot of what that section
3 contains?

4 A. Sure. Starting on page 156, at this particular time
5 Mr. Novak's sending back and forth with a recipient being
6 Seth Kopchu, that's K-o-p-c-h-u.

7 Q. Is this through the same type of direct messaging
8 system?

9 A. Yes.

10 So Mr. Novak sends -- and, again, I'm just going to
11 start at the top here. Mr. Novak sends to Seth Kopchu, "I
12 thought it would be big for like a second I didn't realize
13 it would end up on the news haha." Seth responds, or sends
14 to Mr. Novak, "What can detectives even do here hahaha."
15 Seth again sends a message to Mr. Novak, quote, "Please
16 stop," unquote. Another message that Seth sent to
17 Mr. Novak, "Did you break a law."

18 Q. I'll stop you there, Detective. Did you ever ask the
19 creator of the page to stop the messaging or to take down
20 their site?

21 A. No.

22 Q. And why not?

23 A. At the particular time we didn't know who the person
24 was.

25 Q. And so what was your primary goal on March 2nd as it

1 relates to these Facebook pages?

2 A. Sure. The primary goal was to have the page removed
3 because of what it was creating, and then also to preserve
4 that account and attempt to identify who that person was
5 that created that account.

6 Q. Detective, the sections that we've looked at, are those
7 the only sections in that entire record that deal with the
8 creation of this page?

9 A. No.

10 Q. That's just a brief summary of some conversations that
11 are in there?

12 A. Yes.

13 MS. WOODS: Your Honor, if I may have a
14 moment?

15 THE COURT: You may.

16 BY MS. WOODS:

17 Q. As you were watching the Defendant's page live, at that
18 point did you notice on his page any statements that were
19 public rather than in a private messaging system?

20 A. I saw comments that were public, yes.

21 MS. WOODS: Your Honor, may I approach?

22 THE COURT: You may.

23 Q. I'm approaching with what has been marked as State's
24 Exhibit 11. Take a look at that and tell me if you
25 recognize that.

1 A. Yes, I do.

2 Q. How do you recognize that document?

3 A. This is, again, the printed-out version of Mr. Novak's
4 personal Facebook page that I printed out on March 4th,
5 2016.

6 Q. And is this document showing on the Mondopad the same
7 as what you're holding in your hand?

8 A. It is, yes.

9 Q. What statements or comments did you see or admissions
10 from the Defendant did you see when you were monitoring this
11 page live?

12 A. On page 2 of 5, pardon me, at the bottom right of
13 Mr. Novak's page, he is -- a person by the name -- well, at
14 least the icon of Andrew Mann, M-a-n-n, asks, "Is this a
15 legit site?" Mr. Novak responds, "Ya." Mr. Mann responds,
16 "No it is not. Just found the real one. If you want to
17 find the real site look up City of Parma Police Department.
18 It's basically the same minus the word The."

19 Q. So, Detective, you had mentioned earlier that there was
20 a slight difference in the two banners, one included the
21 word "The"?

22 A. Yes.

23 Q. When did you say you noticed the change to remove the
24 word "The"?

25 A. It was after I initially viewed the page on March 2nd;

1 so, again, between 8:30, 9 o'clock in the morning the word
2 "The" was there, afterwards I noticed that it was gone.

3 Q. Detective, after you got all of the Facebook records
4 and reviewed them, what did you do next?

5 A. Sure. I met with the law department, went over the
6 records and what I learned from the records, and it was at
7 that time that the law department said, move forward with an
8 arrest warrant.

9 Q. Is this standard procedure before you get an arrest
10 warrant?

11 A. Yes.

12 Q. And what is an arrest warrant?

13 A. It's a warrant that's issued to place somebody into
14 custody.

15 Q. What did you do next?

16 A. I went to -- the prosecutor's office prepares the
17 warrants. I appeared in front of a judge or magistrate, I
18 can't remember which one, where I was sworn in, explained
19 the facts to that judge or magistrate, and signed the
20 complaint and warrant, and the judge or magistrate signed
21 the complaint and warrant as well.

22 Q. Was this the Cuyahoga County Prosecutor's office or the
23 City of Parma Prosecutor's office?

24 A. City of Parma.

25 Q. And was the judge a Court of Common Pleas judge or a

1 City of Parma judge or magistrate?

2 A. Parma municipal court judge or magistrate.

3 Q. Is that your standard procedure when you get search
4 warrants or arrest warrants?

5 A. It is, yes.

6 Q. So after you got the warrant, what do you do next?

7 A. The warrant then is filed with the clerk of court's
8 office, and at that particular time it's waiting until
9 another officer either spots the person wanted or another
10 agency picks him up, or whatever the case may be.

11 Q. You don't go breaking down doors at that point?

12 A. No.

13 Q. Did there come a time that you were able to move
14 forward?

15 A. Yes. And I don't remember the exact date off the top
16 of my head, but I did come into work, whatever morning that
17 was and -- I'm saying it's around March 25th time frame,
18 again, I don't know the exact date, but I was advised that
19 Mr. Novak was in custody and he had been arrested the night
20 before.

21 Q. And at that time, upon receipt of that knowledge, what
22 did you do in the course of your investigation?

23 A. I did a processing of Mr. Novak, typical in any type of
24 arrest that we have, we process everybody, and that's what I
25 did.

1 Q. At that point, or at what point did you get a search
2 warrant for Mr. Novak's house?

3 A. Based on what I learned, Mr. Novak was living on
4 Wexford Avenue, had been since October of 2015, but he had a
5 roommate. He had a roommate by the name of Mr. Kozelka, I
6 believe it's Andrew Kozelka. I believe he goes by Drew
7 Kozelka. So based on that, and here, I had not treated this
8 case any different than any other computer crime case that
9 I've ever worked on.

10 Computer crimes are very standard inasmuch as, yes,
11 we have records from Facebook, yes, we did, but I still have
12 to put a perpetrator, an offender behind the computer. So
13 it's not so much that I can base everything on the records,
14 I have to put them behind the computer. And then with the
15 information that I've learned that he had a roommate,
16 Mr. Kozelka, I had to keep in mind that I also have to
17 remove Mr. Kozelka as the possible offender in this case.

18 Q. Just so I'm clear, just because you have these records,
19 your investigation wasn't complete?

20 A. It was not.

21 Q. Is that because I could have said, I'm Anthony Novak
22 and I created that page?

23 A. Not necessarily.

24 Q. Okay. When did you -- what is your process for
25 obtaining a search warrant for a house; is it any different

1 from the other search warrants to search Facebook, or
2 anything like that?

3 A. No, it's exactly the same. We'll prepare the search
4 warrant affidavit, that goes to the law department for
5 review. Again, whatever changes need to be made or if
6 something needs to be added, whatever the case may be, they
7 review the entire documents of the search warrant affidavit.
8 After that is approved by the law department, then I, in
9 this particular case, went to the municipal court judge and
10 applied for the search warrant.

11 Q. And did you execute a search warrant upon Mr. Novak's
12 house?

13 A. Yes, I did.

14 Q. When you execute a search warrant on a house, any
15 house, are your procedures the same?

16 A. Yes.

17 Q. And what are those procedures?

18 A. As far as the entire execution goes?

19 Q. Yes.

20 A. Sure. We take a copy of the search warrant with us,
21 it's called a service copy. You know, for officer safety
22 purposes, we take a good amount of officers with us. We
23 don't know what we're getting into when we're executing a
24 search warrant on a home. So we will knock and announce,
25 Police, search warrant. And in this particular case we did

1 that, there was no answer at the door, we waited a
2 particular amount of time, we entered the residence. We
3 found Mr. Kozelka inside the house, and unfortunately he was
4 using the rest room at the time, so he couldn't come to the
5 door.

6 At that point though, we have a detective or an
7 officer assigned to take photographs; photographs are taken.
8 Pursuant to the search warrant then, what's listed in there
9 ends up being seized. We leave a copy of the inventory
10 sheet with a copy of the search warrant. And then, you
11 know, when we come back, we have to file what's called a
12 search warrant return. We also have to file that paperwork
13 with a judge or another judge of the court that issued the
14 particular warrant, and then those ultimately get filed with
15 the clerk of courts.

16 Q. And you followed -- did you follow that procedure for
17 this warrant?

18 A. I did, yes.

19 Q. And what was the address of that house, if you can
20 recall?

21 A. I don't -- it's 18 something Wexford Avenue. I don't
22 remember the full numericals.

23 Q. What city is that in?

24 A. Parma, Ohio.

25 Q. And what county?

1 A. Cuyahoga.

2 Q. Were photos taken during the execution of this search
3 warrant?

4 A. Yes, they were.

5 Q. Detective --

6 MS. WOODS: Your Honor, may I approach?

7 THE COURT: You may.

8 BY MS. WOODS:

9 Q. Detective, I'm showing you what's been marked as
10 State's Exhibits 28 through 32. Take a moment and review
11 those.

12 A. Yes.

13 Q. Do you recognize those photos, Detective?

14 A. I do, yes.

15 Q. How do you recognize them?

16 A. These are the photographs that -- and I didn't take
17 pictures that day, but another officer took pictures that
18 day of the house, Mr. Novak's residence.

19 Q. Are they true and accurate representations of what the
20 house looked like that day?

21 A. Yes, they are.

22 Q. And, Detective, do the pictures on the Mondopad match
23 what you have in your hand?

24 A. Yes.

25 Q. Is there an exhibit sticker on that document?

1 A. This one is State's Exhibit 32.

2 Q. And what is State's Exhibit 32?

3 A. It shows the exterior of a double, a duplex home.

4 Q. Moving on to the next picture. Do you recognize this
5 picture?

6 A. I do, yes.

7 Q. I believe this is State's Exhibit 31?

8 A. It is, yes.

9 Q. And how do you recognize State's Exhibit 31?

10 A. Again, same thing, an outside photograph of the
11 residence.

12 Q. Is this the residence that you executed the search
13 warrant on?

14 A. It is, yes.

15 Q. Is this a true and accurate depiction of how the house
16 looked on the day of the search warrant?

17 A. Yes.

18 Q. Moving on to State's Exhibit 30. Do you recognize
19 State's Exhibit 30?

20 A. I do, yes.

21 Q. How do you recognize State's Exhibit 30?

22 A. Again, this is just showing, again, the outside of the
23 house, but it's just showing the address on the mailbox.

24 Q. And what is that address?

25 A. 1812.

1 Q. Is this a true and accurate depiction of how the house
2 looked on that day?

3 A. Yes, it is.

4 Q. In order to not repeat myself for the remaining
5 pictures, have you looked through all of those pictures?

6 A. I have, yes.

7 Q. Are they all true and accurate as to when you executed
8 the search warrant that day?

9 A. Yes, they are.

10 Q. I believe this next photo is State's Exhibit 29?

11 A. It is, yes.

12 Q. Do you recognize State's Exhibit 29?

13 A. Again, another photograph from the exterior at the back
14 of the home.

15 Q. Is it common to photograph the exterior of a home when
16 you do a search warrant?

17 A. Yes.

18 Q. And why is that?

19 A. Just to show the way the home was at the time, the day
20 that we executed the search warrant.

21 Q. This should be State's Exhibit 28. I could be wrong
22 with my numbering.

23 A. I'm showing State's Exhibit 22.

24 Q. Then your numbering is correct. State's Exhibit 22, do
25 you recognize it?

1 A. Yes.

2 Q. And how do you recognize it?

3 A. Those were two of the, if I recall correctly, ten items
4 seized, which on the photographs show a cell phone and a --
5 Detective Klein alluded to it -- an AirPad, or something to
6 that effect.

7 Q. A tablet computer?

8 A. Yes.

9 Q. And why do you photograph, why did you photograph these
10 items?

11 A. We photograph all items that are seized.

12 Q. Were these items that were seized?

13 A. Yes.

14 Q. We'll move on to the next, and since my numbering seems
15 to be off in my head, what's the exhibit number on the next
16 one you have?

17 A. State's Exhibit 23.

18 Q. Do you recognize State's Exhibit 23?

19 A. Yes.

20 Q. And how do you recognize State's Exhibit 23?

21 A. This is one of the Toshiba laptops that were seized.

22 Q. And the purpose for seizing the laptops, why were the
23 laptops seized?

24 A. Well, again, as I stated earlier, in computer crimes
25 it's not so much based upon records, certainly you could use

1 those, but ultimately in my training and experience we still
2 have to put the perpetrator or the offender behind the
3 computer. So records are one thing, but actually putting
4 that person behind the computer is something else.

5 Q. And this next picture, Detective, State's Exhibit 24
6 maybe?

7 A. 24, yes.

8 Q. Do you recognize State's Exhibit 24?

9 A. Yes. Again, another laptop that was seized in the
10 search warrant.

11 Q. The next exhibit, State's Exhibit 25?

12 A. It is.

13 Q. And what does State's Exhibit 25 show?

14 A. It's very difficult to tell. It's blurry. I'm not
15 going to pretend to know and say what I think it is.

16 Q. Not a problem.

17 Was it an item in the household?

18 A. It was, yes.

19 Q. State's Exhibit 26, you have the hard copy?

20 A. 26, yes.

21 Q. Do you recognize State's Exhibit 26?

22 A. Yes, this shows two gaming systems in the photograph,
23 the Xbox on what appears to be -- I believe the Xbox on the
24 bottom shelf and another gaming system on top.

25 Q. Were these items that were seized?

1 A. Yes.

2 Q. Why would gaming consoles be seized?

3 A. Again, in my training and experience, gaming consoles
4 also have the ability to connect to the Internet. So if
5 they're Internet cabled, people can communicate and they can
6 use these systems to access the Internet.

7 Q. Next exhibit, Detective, is which exhibit number?

8 A. This is State's Exhibit 27.

9 Q. Do you recognize State's Exhibit 27?

10 A. I do, yes.

11 Q. And how do you recognize State's Exhibit 27?

12 A. In the middle on the note pad is a cell phone that was
13 also seized.

14 Q. This should be State's Exhibit No. 28, do you recognize
15 that?

16 A. It is State's Exhibit 28. Yes, I do. And that appears
17 to be a router in that photograph.

18 Q. And was that seized as well?

19 A. I don't recall the router being seized. It could have
20 been, but I don't recall that.

21 Q. Once you had seized the phones and the Internet capable
22 devices, what did you do next?

23 A. Once we left the house, all that property was taken
24 back to the Parma Police Department detective bureau, and at
25 that point I applied for yet another search warrant to

1 access those electronic devices.

2 Q. So just because you have the devices, does that mean
3 you're able to go into them?

4 A. No.

5 Q. What did you do next?

6 A. Again, prepared a search warrant affidavit, presented
7 that to the law department, who also reviewed it, after it
8 was approved by them, appeared in front of a municipal court
9 judge, I was sworn in, went over the facts of the case, I
10 signed the affidavit, and the judge signed the affidavit and
11 search warrant.

12 Q. Detective, I'm going to show you what has been
13 previously marked as State's Exhibit 6. I'm sorry. State's
14 Exhibit 4.

15 MS. WOODS: Your Honor, may I approach?

16 THE COURT: You may.

17 Q. Do you recognize that, Detective?

18 A. Yes, I do.

19 Q. And how do you recognize that?

20 A. This is one of the items, a Samsung Galaxy S5 that was
21 seized pursuant to the search warrant.

22 Q. Was all the property that was seized returned?

23 A. No, not all of the property.

24 Q. Is there additional property that is still in police
25 lock-up or police evidence?

1 A. Yes, there is.

2 Q. I am going to show you what has been previously marked
3 as State's Exhibit 5-A and 5-B.

4 MS. WOODS: May I approach, Your Honor?

5 THE COURT: You may.

6 Q. Detective, I am showing you what is marked as State's
7 Exhibit 5-A. Do you recognize State's Exhibit 5-A?

8 A. Yes.

9 Q. And what is State's Exhibit 5-A?

10 A. This is a Toshiba laptop with power cord, and it's
11 search warrant item No. 10, that was seized pursuant to the
12 search warrant.

13 Q. And State's Exhibit 5-B, do you recognize that?

14 A. I do, yes.

15 Q. And how do you recognize State's Exhibit 5-B?

16 A. This is a Toshiba laptop, item No. 3, and again that
17 was seized pursuant to the search warrant.

18 Q. How were these items labeled?

19 A. On the search warrant inventory sheet you list items
20 one through however many blocks there are on one page, say
21 there's 1 through 15, so you go to a second page and then
22 list 16 through 25, whatever there is. So each item then is
23 listed, so you have item No. 1, item No. 2, 3, 4, 5, and on
24 this particular one it says search warrant item No. 3. So
25 that would have been listed as No. 3 on the search warrant

1 inventory sheet.

2 MS. WOODS: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MS. WOODS:

5 Q. Detective, I am showing you what's been marked as
6 State's Exhibits 35 and 36, do you recognize these items?

7 A. I do, yes.

8 Q. And how do you recognize State's Exhibit 35?

9 A. 35 is a Western Digital hard drive. Again, it states
10 here search warrant item No. 2, and that would have been
11 seized pursuant to the search warrant.

12 Q. And what, in your training and experience, is the
13 purpose behind a hard drive?

14 A. Sure. A hard drive stores the most amount, at least to
15 my knowledge, stores the most amount of information, so it's
16 important. That's the best I can explain it. The most
17 amount of information, to my knowledge, goes on a hard
18 drive, not a disk or a thumb drive or anything like that,
19 it's the hard drive that contains the most information.

20 Q. So is it an external storage for a computer?

21 A. Sure.

22 Q. And what is State's Exhibit 36?

23 A. State's Exhibit 36 is another hard drive with power
24 cord. This is labeled search warrant item No. 1, and this
25 again was seized pursuant to the search warrant.

1 Q. Were all of the items, after they were seized, passed
2 on for further inspection?

3 A. Yes. As I stated, I applied for a search warrant to
4 actually have the internal things then be examined, and
5 that's where that search warrant then was given to Detective
6 Klein for execution.

7 Q. When Detective Klein was finished with his review of
8 the data, did you review his work as part of your job?

9 A. I did, yes.

10 Q. I am showing you --

11 MS. WOODS: Your Honor, may I approach?

12 THE COURT: You may.

13 Q. Detective, I am showing you what's been marked as
14 State's Exhibits 7, 8 and 21. Tell me if you recognize
15 these.

16 Do you recognize those, Detective?

17 A. I do, yes.

18 Q. Start with State's Exhibit 7, how do you recognize it?

19 A. I recall that this was a screen shot that Detective
20 Klein was able to provide.

21 Q. And is this a screen shot that you reviewed yourself?

22 A. Yes, it is.

23 Q. State's Exhibit 8, do you recognize State's Exhibit 8?

24 A. I do, yes.

25 Q. And how many pages are there to State's Exhibit 8?

1 A. There are two.

2 Q. And what is State's Exhibit 8?

3 A. This is a post that was on the fake Parma Police
4 Department's Facebook page, and this is in regards to the
5 Subway robbery with the woman loitering, you know, and if
6 you have information about her, you know, call the Parma
7 Police Department.

8 Q. To your knowledge, was there a real robbery at that
9 Subway?

10 A. There was, yes.

11 Q. Do you recall what images were used on that, images
12 that were used on that post?

13 A. Yes, it was a capture of surveillance video.

14 Q. Let's look at page 2 of State's Exhibit 8, do you
15 recognize page 2?

16 A. I do, yes.

17 Q. And how do you recognize Exhibit 8 page 2?

18 A. That's the capture from the surveillance video that was
19 actually on the real page.

20 Q. The woman that is seen at the bottom of State's Exhibit
21 2, do you recognize that image?

22 A. I recognize the image from this particular case.

23 Q. Now we're looking at State's Exhibit 21, do you
24 recognize State's Exhibit 21?

25 A. I do, yes.

1 Q. And how do you recognize State's Exhibit 21?

2 A. This is a post, the first post that went up on the fake
3 page in regards to the homeless.

4 Q. To your knowledge, if you know, which post garnered the
5 most attention?

6 A. It was the first post.

7 Q. And this was the first post?

8 A. That's correct.

9 MS. WOODS: Your Honor, may I have a moment?

10 THE COURT: You may.

11 BY MS. WOODS:

12 Q. Detective, is there any other additional follow-up you
13 did as it relates to this case?

14 A. No, nothing that I recall.

15 Q. After this case, did you become aware of any other
16 sites that were up in the name of the Parma Police
17 Department?

18 A. Yes, I did.

19 Q. How did you become aware of those?

20 MR. VICK: Objection, Your Honor. May we
21 approach?

22 THE COURT: You may.

23 - - -

24 (Thereupon, a discussion was had between
25 Court and Counsel at sidebar outside the

1 hearing of the jury and off the record.)

2 - - -

3 THE COURT: Okay. That objection is
4 sustained.

5 MS. WOODS: Thank you, Your Honor.

6 BY MS. WOODS:

7 Q. Detective, were you able to determine the person behind
8 the fake Facebook posts pretending to be the Parma Police
9 Department?

10 A. Yes.

11 Q. And who was that person?

12 A. Mr. Anthony Novak.

13 Q. Do you see Mr. Novak present in the courtroom today?

14 A. I do, yes.

15 Q. And for purposes of our court reporter, could you point
16 out an article of clothing that he's wearing?

17 A. Yes. He has a blue dress shirt on and a silver black
18 and blue tie.

19 MR. VICK: So stipulate, Your Honor.

20 THE COURT: Okay.

21 MS. WOODS: Your Honor, may I have a moment?

22 THE COURT: You may.

23 MS. WOODS: No further questions.

24 THE COURT: All right. Cross-examination.

25 MR. VICK: Thank you, Judge.

1 - - -

2 CROSS-EXAMINATION OF THOMAS CONNOR

3 BY MR. VICK:

4 Q. Good afternoon, Detective.

5 A. Good afternoon. How are you?

6 Q. Well. How are you?

7 A. Good.

8 Q. You've been a detective with the Parma Police

9 Department for a long time, correct?

10 A. Yes.

11 Q. And you're very familiar with what your job duties and
12 responsibilities are, correct?

13 A. Yes.

14 Q. Basically, you investigate crimes; is that right?

15 A. Yes.

16 Q. And part of your duties in investigating a crime is to
17 document your investigation, correct?

18 A. Yes, that is correct.

19 Q. And you document it through either various police
20 reports or investigative reports, correct?

21 A. Yes.

22 Q. And would you agree with me that the information
23 contained in or that you put in that investigative report is
24 very critical to your investigation?

25 A. Yes.

1 Q. And, in fact, if it were a material element of a crime,
2 say a murder, and you had the murder weapon, you would state
3 what date you obtained that murder weapon in your report,
4 correct?

5 A. Yes.

6 Q. Same thing if it were a rape and you obtained a rape
7 kit, correct?

8 A. Yes.

9 Q. And when you were talking about the search warrant at
10 Anthony's residence, okay, and you were saying things like
11 the investigation wasn't over when Facebook returned its
12 pages, correct?

13 A. Yes.

14 Q. Because you have to put Anthony behind the computer,
15 right?

16 A. That's correct.

17 Q. And it's not really behind the computer, but it's
18 behind the Facebook page itself, right?

19 A. Yes.

20 Q. I mean, not that you -- you know, you can't be behind a
21 Facebook page. But you've got to link the two together and
22 put 'em on him, right?

23 A. That's correct.

24 Q. Great. And the only way you can do that, based upon
25 your prior computer experience, is to get your hands on his

1 computer, right?

2 A. Well, yeah, that's the way I was taught and that's the
3 way I have done it for years.

4 Q. I mean, you know, I don't mean just the computer,
5 computer, cell phone, tablets, any type of electronic, Xbox
6 and Play Station?

7 A. Yes.

8 Q. And you had said that the hard drive is one of the more
9 important things because of the volume of material it can
10 take in?

11 A. I did testify to that, but I thought the question was
12 put in a different context.

13 Q. Not important.

14 And you didn't just pick this case up, correct,
15 Lieutenant Riley assigned it to you, right?

16 A. Yes, that's correct.

17 Q. And the police department is what we refer to as a
18 paramilitary organization, correct?

19 A. Yes, that's correct.

20 Q. I apologize, I didn't mean to cut you off.

21 A lieutenant is higher up on the hierarchy than a
22 detective, right?

23 A. Yes.

24 Q. And if a lieutenant gives you an order, you have no
25 obligation to deny that order, correct?

1 A. That's correct.

2 Q. In fact, if you deny that order, you can be written up
3 on conduct charges, right?

4 A. That's correct.

5 Q. So you receive this case on May 2nd, correct?

6 A. Yes.

7 Q. And on May 2nd, I believe you testified that you
8 immediately sent that preservation letter to Facebook,
9 correct?

10 A. Yes.

11 Q. And after that, on May 3rd, you checked to see if that
12 Jayson Barry had responded to you, correct?

13 A. Yes. I can't remember -- yes, I did check on May 3rd
14 to see if -- and I don't know that I testified to it on
15 direct in regards to Mr. Barry.

16 Q. That's correct, and let's just clear up the record.
17 Jayson Barry is the representative from Facebook, correct?

18 A. That's correct.

19 Q. And it will come out later, but we have stipulated to
20 the documents from Facebook in this case. You're aware of
21 that, correct?

22 A. Yes.

23 Q. So there was no need just to drag Mr. Barry in here
24 from California?

25 A. Correct.

1 Q. But that was your main contact point from Facebook?

2 A. Yes.

3 Q. Okay. Thank you. Do you recall then on March 18th you
4 received 2,796 pages of information from Facebook?

5 A. I do recall that, yes.

6 Q. And on March 25th you executed the search warrant at
7 his house, correct?

8 A. Yes.

9 Q. So you testified that the evidence that you're going to
10 take from his house is of the utmost and vital importance to
11 your investigation, correct?

12 A. Well, sure, yeah, I have to put, again, the perpetrator
13 or the offender behind the computer, and especially with the
14 information that I learned that there's a roommate.

15 Q. Right. And you're aware that, throughout the course of
16 your career as a detective, people destroy evidence,
17 correct?

18 A. Yes.

19 Q. They throw hard drives into the Lake, correct?

20 A. Yes.

21 Q. They throw guns into the Lake, correct?

22 A. Yes.

23 Q. So from March 2nd until March 25th you didn't feel it
24 was important to go out there and get his evidence; is that
25 correct?

1 A. Well, no, March 2nd is the date of the incident, March
2 3rd was when I applied for a search warrant for the records
3 for Facebook, March 18th is when I received the records back
4 from Facebook; however, with the question that was
5 presented, I still didn't know where Mr. Novak lived.
6 That's one key factor in this thing in regards to a search
7 warrant. And, again, with information I learned on or about
8 the 24th, 25th of March, that's when we applied for a search
9 warrant for the residence.

10 Q. Yet you received back 2,796 pages on March 18th, right?

11 A. Yes.

12 Q. And you received back Anthony Novak's personal Facebook
13 page, correct?

14 A. I did, yes.

15 Q. And you had a picture of Anthony Novak from those
16 Facebook pages, correct?

17 A. Yes, I did.

18 Q. And if you run Anthony Novak's name in the Bureau of
19 Motor Vehicles, a license picture would have come up,
20 correct?

21 A. Yes, I believe so.

22 Q. And if he's registered with the Bureau of Motor
23 Vehicles, you would have been able to find his address,
24 correct?

25 A. Oh, we did have an address for him. We had a Pinegrove

1 address for him.

2 Q. But you could have executed that search warrant a lot
3 earlier --

4 A. I don't believe so.

5 Q. -- isn't that correct?

6 Throughout the investigation in this case, again,
7 it's -- you testified to it, it's very important and
8 critical for you to document the steps you take and the
9 evidence you obtain and the key facts of the case in your
10 investigative report, correct?

11 A. Yes.

12 Q. And do you have that report?

13 A. In front of me, no.

14 Q. In your report, on March 2nd you had testified you were
15 made aware of a fake page, correct?

16 A. Yes.

17 Q. And then you document on March 3rd that you had checked
18 your email and found that Mr. Barry had gotten back to you,
19 correct?

20 A. Yes.

21 Q. And March 18th was the documentation for the Facebook
22 pages received, correct?

23 A. Yes.

24 Q. March 25th you note that you were advised that Anthony
25 had been arrested, right?

1 A. Yes.

2 Q. And March 28th is when you applied for the search
3 warrant, correct?

4 A. Again, I don't know without my report, but it's around
5 March 25th-ish time frame.

6 Q. And that was contained in your report, correct?

7 A. Yes.

8 Q. Okay. On March 29th you were documenting things that
9 Detective Klein had given you with respect to the items that
10 were seized, correct?

11 A. Yes.

12 Q. And on March 30th Detective Klein advised you that the
13 computer does belong to Novak and the investigation or the
14 interrogation of the computer was complete, correct?

15 A. Yes.

16 Q. April 4th you stated that you went through the images
17 from Kozelka's computer, correct?

18 A. Yes.

19 Q. And on April 5th you were very clear to document all of
20 the calls that came into dispatch, correct?

21 A. Yes.

22 Q. And we're here on a charge of disrupting public
23 service, correct?

24 A. Yes.

25 Q. And it's the disruption of a public service or a police

1 function, correct?

2 A. Yes.

3 Q. And you testified on direct examination that because of
4 your investigation in this case you had to cancel a buccal
5 swab, correct?

6 A. Yes.

7 Q. Where is that in your report?

8 A. That's not in the report.

9 Q. Okay. When you apply for a search warrant, that search
10 warrant has to have an affidavit, correct?

11 A. Yes.

12 Q. And in order for a search warrant to be granted by a
13 judge or a magistrate you have to satisfy or convince that
14 judge or magistrate that there's probable cause either that
15 a crime was committed or that the items you're looking for
16 in an investigation are where you say they are, correct?

17 A. Yes.

18 Q. And so the items -- strike that.

19 When you draft an affidavit, it has various numbered
20 paragraphs, correct?

21 A. Yes.

22 Q. And when you're done, you review that affidavit,
23 correct?

24 A. Yes.

25 Q. And that affidavit, in order to get notarized, it's

1 sworn testimony, right?

2 A. Yes.

3 Q. You have to raise your hand and take an oath before the
4 notary will stamp it, right?

5 A. Yes. Yes, but we don't -- a notary doesn't stamp it.

6 A judge signs it and then it goes to the clerk of courts.

7 Q. And you would agree with me that it's very critical and
8 important to contain, or to put in the affidavit all of the
9 key facts that you have to support that a crime was
10 committed, correct?

11 A. Yes.

12 MR. VICK: Your Honor, may I approach?

13 THE COURT: You may.

14 MR. VICK: Thank you.

15 BY MR. VICK:

16 Q. Detective, I'm going to hand you what's been previously
17 marked as Defendant's Exhibit B. Would you take a moment
18 and look at that, please.

19 A. Okay.

20 Q. Detective, are you ready?

21 A. Yes.

22 Q. Okay. Thank you. And, sir, you've had an opportunity
23 to review that?

24 A. I have, yes.

25 Q. And if you'd go to page 1 of the actual search warrant,

1 would you agree with me that this is the search warrant and
2 attached affidavit for the search of Anthony's residence?

3 A. Yes.

4 Q. Okay. And after having reviewed that, are you
5 satisfied it's a true and accurate representation and a true
6 and accurate copy of the actual search warrant and affidavit
7 you obtained?

8 A. Yes.

9 Q. Thank you. And can you go to paragraph 5 of your
10 affidavit, please.

11 MS. WOODS: Objection. May we approach?

12 THE COURT: You may.

13 - - -

14 (Thereupon, a discussion was had between
15 Court and Counsel at sidebar outside the
16 hearing of the jury and off the record.)

17 - - -

18 THE COURT: That objection is overruled.

19 MS. WOODS: Thank you, Your Honor.

20 MR. VICK: Thanks, Judge.

21 BY MR. VICK:

22 Q. Thank you, Detective, and I would like to point your
23 attention to paragraph 5. Do you see that paragraph?

24 A. I do, yes.

25 Q. And it states, "Affiant" -- and affiant would be you,

1 correct?

2 A. Yes.

3 Q. "Affiant avers that the user who was posting this
4 information purported himself to be a representative of the
5 Parma Police Department, as exact images used on the real
6 Facebook page were used on the fake Facebook page. The user
7 further disrupted and impaired the function of the Parma
8 Police Department by knowingly posting false information,"
9 correct?

10 A. Yes.

11 Q. And that's what it says word for word, right?

12 A. Yes.

13 Q. No evidence of a missed buccal swab appointment in that
14 affidavit paragraph, correct?

15 A. No.

16 Q. Can you read paragraph 6 for me.

17 A. It states, "Affiant avers that as a result of this fake
18 account being created, Parma City Hall, Parma Law Department
19 and Parma Police Department received numerous calls and
20 complaints regarding the content. There were also numerous
21 amounts of comments posted on the fake page, including 'fuck
22 the Parma Police'."

23 Q. And what you detail in that paragraph are the calls
24 that dispatch took, right?

25 A. No, not only the calls to Parma dispatch, but the calls

1 to the law department and to the safety department.

2 Q. And you also make a comment in there about people using
3 a horrible word against the Parma Police, right?

4 A. Yes.

5 Q. And that wasn't Anthony's -- those were not Anthony's
6 words, correct?

7 A. They were not.

8 Q. Just some moron comment under one of the posts,
9 correct?

10 A. Yes.

11 Q. And you took offense to that, didn't you?

12 A. I didn't take offense to it.

13 Q. Why did you put it in your affidavit?

14 A. It's putting an example of comments that were left
15 behind, that's all it was.

16 Q. Well, there were comments that we went through over
17 here that were more pertinent to your investigation that
18 Anthony had like, I deleted the comments that were fake,
19 right?

20 A. Yes.

21 Q. Okay. And there were more pertinent comments like, I'm
22 proud of my actions, correct?

23 A. Yes.

24 Q. But you chose the one that was disparaging of the Parma
25 Police Department, didn't you?

1 A. I just put that in as an example of comments that were
2 being posted.

3 Q. Detective, I would like to take you back to March 2nd,
4 if that's okay with you. When you looked -- strike that.

5 When you were made aware of the fake page, and we
6 keep calling it a fake page, it was a real Facebook page,
7 but we're calling it the fake Parma Police page?

8 A. Yes.

9 Q. Did you review all of the posts that Anthony put on
10 there when Lieutenant Riley assigned you this case?

11 A. Yes.

12 Q. So you saw the homeless post?

13 A. Yes.

14 Q. And then we went backwards all the way through abortion
15 and pedophiles, all the way to the top one, correct?

16 A. Yes.

17 Q. So it was apparent immediately to you when you looked
18 at this that it was fake?

19 A. I guess two-fold here. Was it apparent? No, it's not
20 apparent until you start reading the posts. But when I
21 initially opened it, I go, wow, this is our page, but not
22 until you start reading the posts.

23 Q. And once you start reading the posts, the absurd nature
24 of the actual content of the posts comes through, correct?

25 A. Yes.

1 Q. And throughout the course of your investigation, you
2 know, and I'm trying not to be too duplicative with this,
3 but there was no evidence that your real page was harmed,
4 correct?

5 A. There was not.

6 Q. Yeah, Anthony didn't hack the real page, right?

7 A. He did not.

8 Q. And some other, you know, anti-police person didn't
9 hack the real page, correct?

10 A. No, the real page was not hacked.

11 Q. Okay. And the website was okay?

12 A. Yes.

13 Q. And because Lieutenant Riley assigned this case to you,
14 you had to go through thousands of documents, correct?

15 A. Yes.

16 Q. And those documents were the Facebook documents, right?

17 A. That's right.

18 Q. And we went through a lot of comments and messages that
19 Anthony had on there, correct?

20 A. Yes.

21 Q. Anthony never made a single threat to the Parma Police
22 Department, did he?

23 A. No.

24 Q. And there was no content on there or messages that, I
25 did this to shut down the Parma Police Department, correct?

1 A. No.

2 Q. And on the loitering and robbery post, which we're all
3 familiar with, okay?

4 A. Yes.

5 Q. He said, Call Detective Tremble, correct?

6 A. Yes.

7 Q. And I apologize, I don't remember, who's your real
8 detective?

9 A. Duganier.

10 Q. Okay. And on the Parma Police Department's real page
11 it listed Detective -- either Detective Duganier's number or
12 the general police number, correct?

13 A. Yes.

14 Q. And in Anthony's post he didn't have any numbers on
15 there, correct?

16 A. I don't recall that, just the Detective Joe Tremble.

17 Q. And I apologize, no telephone numbers, correct?

18 A. Yes.

19 Q. In fact, nowhere on Anthony's fake page was there ever
20 any telephone numbers listed, right?

21 A. No, I don't think so.

22 Q. In the dispatch calls, you downloaded eleven phone
23 calls, correct?

24 A. Yes. Yes, there were eleven phone calls. In my notes
25 I -- it's actually ten calls, because the one person was two

1 phone calls.

2 Q. Right, it was kind of split into two. Okay. Ten phone
3 calls, you and I can agree on that?

4 A. Yes.

5 Q. Would you have any reason to disagree with me if I told
6 you the total length of those ten phone calls was 11.3
7 minutes?

8 A. I would not.

9 Q. And those calls didn't come in like they were played in
10 court, one after another, correct?

11 A. Correct.

12 Q. And I think you did a good job of documenting the times
13 that the call was received, correct?

14 A. Yes.

15 Q. And they came in over a 12-hour time period, correct?

16 A. Yes. All ten calls in totality came in over a 12-hour
17 time period; however, there was six calls in a
18 three-and-a-half-hour time period.

19 Q. And there was not a flood of phone calls sufficient to
20 shut down the non-emergency line, correct?

21 A. The non-emergency line was not shut down.

22 Q. 9-1-1 wasn't shut down, correct?

23 A. To my knowledge, no.

24 Q. And, again, throughout the course of your
25 investigation, especially when you think or when the website

1 is still active, you didn't send any cars to either
2 Giant Eagle or St. Anthony's, did you?

3 A. I did not.

4 Q. You certainly didn't assemble a SWAT team, did you?

5 A. No.

6 Q. Any protesters show up?

7 A. To my knowledge, no.

8 Q. And you said all of your search warrants in this case
9 were approved by the law department, correct?

10 A. Yes.

11 Q. And your involvement in this really started with
12 Lieutenant Riley, correct?

13 A. Yes.

14 Q. And you're following orders from Tim Dobeck and the law
15 department, correct?

16 A. Yes.

17 MR. VICK: One moment, Your Honor.

18 Q. Do you know how long the fake Facebook page was up?

19 A. No, I don't. Off the top of my head, I couldn't give
20 you an exact time.

21 Q. And throughout the course of your investigation, did
22 you come to learn that the fake page had the same email
23 address tied to it as Anthony's real page?

24 A. Yes, I did.

25 Q. And you had testified, and I apologize if it wasn't

1 you, but one of the detectives testified that he took his
2 real page down, too, correct?

3 A. That who took his real page down?

4 Q. That Anthony's real page was also down.

5 A. Yeah. Yes.

6 Q. Okay. Do you know who took down the fake page?

7 A. No, I don't. And, frankly, my report indicates that I
8 had sent the preservation letter out to Facebook requesting
9 that they remove it. Going through content on Mr. Novak's
10 page, there's discussion he has with somebody, I can't
11 recall who it is now, that he was going to delete the page.
12 I know through my own research that we can all delete our
13 own Facebook pages, it takes up to 14 days to delete so long
14 as you don't log back into that account. So exactly what
15 caused it to be taken down or who's responsible ultimately
16 for that being taken down, I don't know.

17 Q. You don't know. Okay. Thank you very much.

18 MR. VICK: Your Honor, I don't have any
19 further questions. Thank you.

20 THE COURT: Okay. Thank you. Redirect.

21 - - -

22

23

24

25

1 REDIRECT EXAMINATION OF THOMAS CONNOR

2 BY MS. WOODS:

3 Q. Detective, Mr. Vick asked you could you have gotten the
4 search warrant earlier, and what was your answer?

5 A. I believe I stated I don't think I could have.

6 Q. And why was that?

7 A. Because I didn't know where Mr. Novak was living at.

8 We had information that he was on Pinegrove, but I also had
9 information that he wasn't on Pinegrove, so I didn't have
10 enough to get inside of a residence.

11 Q. Is there harm in executing a search warrant on a wrong
12 address?

13 A. Oh, absolutely.

14 Q. And what harm is that?

15 A. Oh, my goodness. I could just imagine myself if that's
16 my house, you know, that the police hit the wrong house,
17 whether that's an officer safety issue. We've all read the
18 articles in the paper where police have hit the wrong house
19 and somebody ends up being killed because they had the wrong
20 address. Yeah, it's a huge risk.

21 Q. So the day you executed the search warrant was the
22 soonest available day to execute the search warrant?

23 A. Yes.

24 Q. Did people believe this fake Parma Police Department
25 Facebook page was a real Facebook page?

1 A. Yes.

2 Q. To your knowledge and in the course of your
3 investigation, did you find that people believed this to be
4 a true page?

5 MR. VICK: Objection, Your Honor.

6 THE COURT: Sustained.

7 MS. WOODS: Thank you, Your Honor. No
8 further questions.

9 MR. VICK: I'm sorry. Nothing, Your Honor.

10 THE COURT: All right. You may step down.

11 THE WITNESS: Thank you.

12 - - -

13 (Thereupon, the witness was excused.)

14 - - -

15 THE WITNESS: Judge, do you want us to take
16 this back, this table and all this stuff?

17 THE COURT: If you don't mind, that would
18 probably be helpful, since our jurors won't be able
19 to get out.

20 Okay. You may call your next witness.

21 MS. WOODS: Thank you, Your Honor. The State
22 would rest, pursuant to the admission of its
23 exhibits.

24 THE COURT: All right. Do the lawyers want
25 to approach for a minute?

1 - - -

2 (Thereupon, a discussion was had between
3 Court and Counsel at sidebar outside the
4 hearing of the jury and off the record.)

5 - - -

6 THE COURT: Ladies and gentlemen, we're going
7 to take a little bit longer of a break right now.
8 We're going to take about half-an-hour, so if you
9 would like -- would anybody like to go back to the
10 fourth floor?

11 A JUROR: Is there a soda machine on this
12 floor?

13 THE COURT: No. I am going to have all of
14 you go to the fourth floor. Really, you have to go
15 together. You can't be separated. So I'll have you
16 go down to the fourth floor, and we'll call you up
17 in a half-hour, like at 3:35. All right?

18 Again, you are not to discuss the case
19 amongst yourselves. Do not discuss it with anyone
20 or form an opinion on this case until it is finally
21 submitted to you. Do not permit anyone to discuss
22 it in your presence. You are not to conduct any
23 research of your own whatsoever. You can't Google
24 anything that you've heard at all in this trial.
25 You are not permitted to read any news media,

1 newspaper accounts of this trial. And you are not
2 to post anything or read anything on Facebook,
3 Twitter, SnapChat, Instagram, whatever means you use
4 to communicate with the outside world through social
5 media.

6 All right, folks? So I'll see you back in
7 about half-an-hour.

8 All rise for the jury.

9 - - -

10 (Thereupon, a recess was taken for the jury
11 and the following was held in open court:)

12 - - -

13 THE COURT: Okay. Do the lawyers want to
14 approach for a minute, and then we can go on the
15 record. Did you look at all of her exhibits?

16 MR. VICK: Huh-uh.

17 THE COURT: You didn't?

18 MR. VICK: I don't -- we talked about them
19 before we started.

20 - - -

21 (Thereupon, a discussion was had between
22 Court and Counsel off the record.)

23 - - -

24 THE COURT: So let's go on the record now
25 with these.

1 Okay. So now we are going back on the record
2 with the exhibits. On behalf of the State?

3 MS. WOODS: Thank you, Your Honor.

4 The State would move to admit Exhibit 1,
5 which was the printout from Detective Connor, the
6 official Parma Police Department Facebook page.

7 Exhibit 2-B --

8 THE COURT: One second. So is there any
9 objection?

10 MR. VICK: No objection.

11 THE COURT: State's Exhibit 1 is admitted
12 without objection.

13 MS. WOODS: Thank you, Your Honor.

14 The State would move to have 2-B, the
15 isolated text messages from Novak admitted.

16 MR. VICK: No objection.

17 THE COURT: All right. So those are admitted
18 without objection.

19 Well, you know what, why don't you just go
20 through your list, and then the ones that you object
21 to, then we'll argue. So then I can just do an
22 admitted without objection to all of them. All
23 right?

24 MS. WOODS: Exhibit 7, the screen shot.

25 Exhibit 8, also a screen shot. Exhibit 9, the

1 dispatch calls. Exhibit 10, the two Facebook
2 banners. Exhibit 11 is the printout from Detective
3 Connor of Anthony Novak's personal Facebook page.
4 Exhibit 12, Anthony Novak's printout of the personal
5 Facebook page, also printed out by Detective Connor.

6 Exhibit 13, the printout of Anthony Novak's
7 pages that he likes or follows. Exhibit 16, which
8 is the records received from Facebook from the fake
9 Parma Police Department page. I believe there's a
10 stipulation to those.

11 MR. VICK: Correct.

12 MS. WOODS: Exhibit 17, the screen shot of
13 Anthony Novak's posts. Exhibit 18, screen shot of
14 Anthony Novak's posts. Exhibit 20, the complete
15 records. Again, I believe there's a stipulation to
16 that.

17 Exhibit 21, screen shot from the fake
18 homeless posts. Exhibits 22, 23, 24, 25, 26, 27,
19 28, 29, 30, 31, and 32 were all pictures from the
20 search warrant. The physical evidence the State is
21 not moving to admit. It needs to stay in police
22 custody. The State would also move to admit Exhibit
23 19, that was testified to, it was where the
24 detective put all the images that he downloaded onto
25 a disk, some of those pictures were printed out,

1 some of the relevant ones.

2 THE COURT: All right. So regarding then
3 State's Exhibits 1, 2-B, 7, 8, 9, 10, 11, 12, 13,
4 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,
5 30, 31, and 32, are there any objections to any of
6 those?

7 MR. VICK: No, Your Honor.

8 THE COURT: All right. Those are all
9 admitted without objection.

10 Now regarding Exhibit 19.

11 MR. VICK: Judge, Exhibit 19 has been
12 represented to me to be a DVD or CD containing all
13 of the images from Anthony Novak's computer. While
14 I appreciate that the detective testified that he
15 dumped them all on here, none of them or only a few
16 of them were actually talked about or there's any
17 evidence of they were given to anybody. We really
18 don't know what's on here. There's been no -- they
19 didn't show them on the screen. There's no basis
20 for them to be admitted.

21 MS. WOODS: Your Honor, the detective
22 testified that it is an exact replica of the
23 computer as it stood when he did his interrogation
24 process. That it -- we have pulled out only a
25 handful of the pictures. I believe he also

1 testified, and I might be wrong, that there were
2 more pictures on the disk.

3 THE COURT: Well, is there any way to exclude
4 everything that's not relevant?

5 MS. WOODS: I could dump them onto another
6 disk.

7 THE COURT: Of just the ones that are
8 relevant to this case?

9 MS. WOODS: I can't do it off of this disk,
10 Your Honor, because this is the official copy.

11 THE COURT: Okay. So --

12 MR. VICK: I mean, the ones that you think
13 are relevant are the ones that you printed out and
14 showed the people, right?

15 MS. WOODS: There are several duplicates of
16 the same photo. For one example, the picture of the
17 screen shot of the homeless, every couple hundred
18 shares and every time it got bigger and bigger,
19 there was a new screen shot of it.

20 Your Honor, it's not the biggest deal in the
21 world that this goes in or not. The State is asking
22 to move it in, you're asking to leave it out.

23 THE COURT: I'm going to say that it's not
24 admitted.

25 MS. WOODS: Thank you, Your Honor.

1 THE COURT: So 19 stays out.

2 MS. WOODS: The State is also not moving to
3 put into evidence its Exhibit 34, which is the
4 dispatch calls. It's notes and it was used to
5 refresh memory rather than --

6 MR. VICK: That's your call.

7 MS. WOODS: Okay. I know it's something you
8 had asked if it was going to go in.

9 MR. VICK: Uh-huh.

10 MS. WOODS: And it's just the detective's
11 notes used to refresh memory, I do not plan to admit
12 that one.

13 THE COURT: Okay. All right. So are you
14 making a motion?

15 MR. VICK: Yes, Your Honor. Thank you. And
16 I know we have briefly discussed these. Out of an
17 abundance of caution, or to make sure I don't waive
18 anything on appeal, to make sure I don't commit
19 malpractice, I am renewing the motion to dismiss and
20 asking this Court to find the Revised Code Section
21 that Mr. Novak has been charged under to be
22 unconstitutional for all of the reasons we stated in
23 our motion to dismiss, the written motion to
24 dismiss, and I would incorporate in its entirety
25 that motion and every single argument in there into

1 my renewed motion to dismiss at the close of their
2 case.

3 With respect to Criminal Rule 29, we would
4 ask this Court to enter a judgment of acquittal for
5 Mr. Novak at this point in time because there's been
6 no evidence that anything was disrupted by dispatch
7 or Detective Connor. There was some evidence, and I
8 know this Court is unable to weigh that evidence,
9 that he had to cancel a buccal swab appointment.
10 But Detective Connor did nothing other than that
11 which he was supposed to do in this case,
12 investigate crimes. That's what he was doing,
13 that's his function. The Facebook page didn't
14 interfere with his function as a police detective,
15 and there was absolutely no evidence that it
16 interfered, disrupted, or impaired dispatch.

17 There's been no evidence whatsoever that the
18 sole purpose that Anthony set this page up, that he
19 knowingly used a computer or the Internet so as to,
20 which is akin to the reason I did it was to disrupt
21 the police. I think it's clear that this is,
22 regardless of what people think about the posts,
23 it's clear that this was a joke.

24 And for those reasons, and the lack of any
25 evidence at this point in time for which the State

1 has rested, we would ask that the Criminal Rule 29
2 motion be granted. Thank you.

3 THE COURT: All right. On behalf of the
4 State?

5 MR. MIRANDA: Thank you, Your Honor, may it
6 please the Court. In response to the motion to
7 dismiss, the State would incorporate the arguments
8 it submitted in its brief in opposition and
9 discussed at the hearing on the motion to dismiss.

10 With respect to the Rule 29 motion, obviously
11 the Court's aware that the motion requires that you
12 take the evidence in the light most favorable to the
13 State. I don't think there's any question, based on
14 the evidence, that Mr. Novak created this page, that
15 he used the Internet to create the page. I think
16 it's -- I think the evidence does support the idea
17 that he knew the page was disrupting. The evidence
18 established that he, himself, became aware that the
19 Parma Police had put out a warning and that he
20 copied the warning onto the fake page.

21 There's testimony about five dispatchers who
22 fielded calls, multiple detectives who worked on
23 this case. Detective Connor, in particular, who had
24 to obtain search warrants, who missed an appointment
25 on another case that he had. And so we think

1 there's ample evidence that there was disruption and
2 that he knew his actions were disrupting the police
3 department.

4 For that reason, we would ask the Court to
5 deny the motion. Thank you.

6 THE COURT: Okay. Thank you. Anything
7 further?

8 MR. VICK: No, Your Honor.

9 THE COURT: So your motion for Rule 29 is
10 denied.

11 MR. VICK: Thank you.

12 THE COURT: All right. And at this time
13 would you like to argue your jury instructions?

14 MR. VICK: Yes, Judge. We had submitted a
15 proposed jury instruction on the First Amendment. I
16 think that -- and, again, this was all laid out and
17 none of it was a surprise to the prosecutors,
18 because we used the same law and the same First
19 Amendment argument and First Amendment language that
20 was in the motion to dismiss.

21 We would argue that *Reno v. ACLU* in 1997 from
22 the United States Supreme Court clearly established
23 that speech on the Internet is absolutely protected
24 under the First Amendment. Not only is it
25 absolutely protected, but it is given the highest

1 level of protection akin to print and news media and
2 journalism.

3 We would submit that the evidence in this
4 case that has come through is that Anthony used the
5 Internet, he set up a Facebook page. He made
6 statements and comments through the Facebook page
7 and set up these posts. Whether they were real or
8 fake, the First Amendment doesn't -- the imports of
9 the First Amendment don't differentiate between real
10 and fake. The First Amendment applies to all
11 speech, except fighting words, incitement,
12 obscenity, and child pornography. There's been no
13 evidence that any of these were fighting words.
14 There's no evidence that these incited any citizen
15 or police officer to imminent, which means right
16 now, unlawful action. And there's been no evidence
17 that -- and obviously obscenity doesn't apply,
18 neither does child pornography.

19 We would submit to this Court that under
20 Criminal Rule 30, that the Court has a duty and an
21 obligation, and shall provide jury instructions to
22 the jury that are relevant and necessary for them to
23 fully weigh the evidence and discharge their duty as
24 a fact-finder.

25 The uncontroverted evidence, as we stipulated

1 to all the Facebook messages, is that this Internet
2 speech and the First Amendment absolutely applies.
3 And we did file a motion, and I can send it in for
4 the record as well, we attached a proposed jury
5 instruction on First Amendment protected speech
6 where we stated that unless the jury were to find
7 that the speech and the content were fighting words,
8 incitement, obscenity, and/or true threats, that
9 they have to find him not guilty, due to his
10 constitutional -- constitutionally protected First
11 Amendment right.

12 We did cite to a case to analogize this issue
13 to a flag burning case where the court did not give
14 a First Amendment instruction and the Supreme Court
15 stated that it was reversible error. And I know
16 there's going to be a counter argument that this
17 isn't a flag burning case and that this Internet
18 page mimicked a real police department page.
19 There's going to be an argument that he impersonated
20 the real police department. This is not an
21 impersonating a police officer case. He hasn't been
22 charged with a misdemeanor. The indictment in this
23 case was for disrupting public service.

24 The avenue that they charged him with within
25 which to disrupt the public service was the speech.

1 And I think it's very telling that the press
2 releases and the affidavits for the search warrant
3 mention content, inflammatory and derogatory, F the
4 Parma Police. He was prosecuted because of the
5 content. No question about it. And even if there
6 is a question about it, it's reversible error not to
7 give the jury, or not to make it a question of fact
8 for them to apply the First Amendment.

9 We would ask the Court to include in the
10 general instructions, which make no mention of First
11 Amendment, our instruction. Thank you.

12 THE COURT: Okay. Thank you. On behalf of
13 the State.

14 MR. MIRANDA: Thank you, Your Honor. May it
15 please the Court. The State was in receipt of
16 Defendant's motion today, obviously the Defendant is
17 relying on State versus Lessin, L-e-s-s-i-n, 67 Ohio
18 State 3d, 487. That case dealt with a situation of
19 flag burning, and the Ohio Supreme Court in that
20 case cited to Texas versus Johnson, in which the
21 United States Supreme Court recognized that flag
22 burning is constitutionally protected under the
23 First Amendment. So in that case the Ohio Supreme
24 Court held that a jury instruction was appropriate.

25 In contrast to that case, and I think the

1 Court has found State versus Frazier, F-r-a-z-i-e-r,
2 2011-Ohio-3189, a decision from the Ninth District,
3 paragraph 20 of that decision, the Ninth District
4 distinguishes Lessin because that -- because
5 Frazier's case did not involve a situation where it
6 was uncontroverted that the speech in that case was
7 protected. The facts of that case were there was a
8 person who was yelling at police and a crowd of 30
9 or 40 people had amassed, so the Court determined
10 that an instruction wasn't necessary in that case.

11 There's been no case cited directly on point
12 establishing that you can pretend to be a police
13 officer online and to knowingly disrupt public
14 services and that that would be constitutionally
15 protected.

16 Defendant cites Reno, R-e-n-o, which stands
17 for the proposition that the Internet receives as
18 much protection as other speech does. That's not
19 what the State is arguing. Of course, if this
20 content had been posted on Mr. Novak's personal
21 page, no one would be here. It's because it was
22 posted in the name of the Parma Police Department
23 that it caused the disruption. And for that reason,
24 because it's not a content based restriction here,
25 it's not a content based prosecution, the State

1 submits that a jury instruction is not appropriate.

2 THE COURT: Okay. Thank you.

3 MR. MIRANDA: Thank you.

4 THE COURT: So I have had an opportunity to
5 review at the break your motion, the instruction
6 that you are proposing and the case law. And I find
7 that the instruction that you're proposing is not
8 warranted in this case. So I'm not going to give
9 any instruction on the First Amendment. All right.
10 Okay.

11 Now, Mr. Proctor and Mr. Vick, have you had
12 an opportunity to discuss with your client whether
13 or not he wishes to testify?

14 MR. VICK: Thank you, Judge. And with great
15 consideration of this Court, we were granted about
16 20 minutes or a half-hour to have discussions with
17 our client. Obviously, based on my duty of
18 confidentiality and attorney/client privilege,
19 there's no need to go into those, and I will not go
20 into those, but we have had an opportunity to
21 discuss that with him. Thank you.

22 THE COURT: All right. And so, Mr. Novak,
23 have you had an opportunity to discuss with your
24 attorneys your decision whether or not you will be
25 testifying in this case?

1 THE DEFENDANT: Yes, I have.

2 THE COURT: Okay. And have you had enough
3 opportunity to discuss with them your decision
4 whether or not to testify?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: And what is your decision?

7 THE DEFENDANT: No.

8 THE COURT: You are not going to testify?

9 THE DEFENDANT: No.

10 THE COURT: All right. So are you -- you'll
11 rest in front of the jury.

12 Well, do you have any other witnesses that
13 you intend to call?

14 MR. VICK: No, Your Honor.

15 THE COURT: So you will rest in front of the
16 jury when I bring them out, and then we'll conclude
17 this session for today. So then Monday we will
18 start at 8:45 and go right into closing arguments.
19 And I permit you to select if you would like me to
20 charge first or close first. And if you want the
21 jury to be charged first, then the charge has to be
22 in perfect condition before we start. So if I say
23 we're going to start at 8:45, the charge, as you
24 agree to it, has to be ready to go at 8:45, not at
25 8:50 or 8:55 or 9 o'clock.

1 So I don't know, has anybody reviewed the
2 charge?

3 MS. WOODS: We have.

4 THE COURT: Are there any changes, deletions,
5 corrections?

6 MR. VICK: Just to pull out the page he did
7 not testify.

8 THE COURT: And then the stipulations,
9 correct?

10 MR. VICK: Yes.

11 THE COURT: The stipulations. So I will have
12 my secretary then tomorrow type in the stipulations
13 and then email them to you. Do we have your email?

14 MR. VICK: Uh-huh.

15 THE COURT: Okay. And email them to both
16 sides. If there's any changes then, I know she gets
17 here really early Monday, and so do I, so you can
18 email what your agreed changes are.

19 All right. So if you're ready to go and you
20 want me to charge them first and then you argue,
21 then I can do that.

22 MS. WOODS: The State has no preference, Your
23 Honor.

24 THE COURT: Would you like to argue and then
25 charge?

1 MR. VICK: I would like to charge then argue.

2 THE COURT: Okay. All right. So I'm going
3 to bring them out, and then you can rest on the
4 record.

5 Now, before we line them up, since you are
6 resting now, I guess you can renew your Rule 29
7 motion.

8 MR. VICK: Yeah, and I have two exhibits that
9 I would like to offer.

10 THE COURT: So why don't we do that.

11 MR. VICK: And obviously, you know, all I
12 will do is renew for all the reasons I just set
13 forth.

14 THE COURT: All right. So would you like to
15 renew your Rule 29?

16 MR. VICK: Yes. Just for purposes of the
17 record, the renewal of the motion to dismiss with
18 the same arguments and incorporation as before, and
19 the renewal of the Rule 29.

20 THE COURT: Okay. And you've rested, right?

21 MR. VICK: Yes.

22 THE COURT: All right. And what exhibits do
23 you have?

24 MR. VICK: We have two exhibits. One is the
25 press release, which I discussed with Detective

1 Riley, that he authenticated, that we were given in
2 discovery, the press release on March 25th, 2016.

3 MS. WOODS: No objection from the State to
4 either exhibit, Your Honor.

5 MR. VICK: Thank you.

6 THE COURT: So Defendant's Exhibit --

7 MR. VICK: I'm sorry, that's F.

8 THE COURT: F?

9 MR. VICK: Yes.

10 THE COURT: And what's the other one? It's
11 admitted without objection.

12 MR. VICK: The other one -- that was Exhibit
13 B, the search warrant I discussed at length with
14 Detective Connor, that he testified was a true and
15 accurate copy of his actual search warrant and
16 accompanying affidavit.

17 THE COURT: Is there any objection to that?

18 MS. WOODS: I'm sorry. No, Your Honor. I
19 thought I was clear to both, that there's no
20 objection from the State.

21 MR. VICK: Oh, thank you.

22 THE COURT: So Defendant's Exhibits F and B
23 are admitted without objection.

24 MR. VICK: Yes. And I'm dropping them on the
25 court reporter's table.

1 THE COURT: Okay.

2 MS. WOODS: I'm sorry, Your Honor, that was
3 my fault. I thought I had said before he started
4 the second one that there was no objection from the
5 State to either one. That was my fault.

6 THE COURT: All right. Okay. So we can
7 bring them back out.

8 THE BAILIFF: Okay.

9 - - -

10 (Thereupon, proceedings were resumed within
11 the presence of the jury as follows:)

12 - - -

13 THE COURT: Okay. You may be seated.

14 All right. Mr. Vick, on behalf of the
15 Defendant.

16 MR. VICK: Thank you, Your Honor.

17 Based upon the hearing that was previously
18 held and things that were put on the record,
19 Mr. Novak, at this point in time, we are not calling
20 any witnesses and we will rest.

21 THE COURT: Okay. Thank you.

22 MR. VICK: Thank you.

23 THE COURT: All right. Do the lawyers just
24 want to come up for a brief second?

25 - - -

1 (Thereupon, a discussion was had between
2 Court and Counsel at sidebar outside the
3 hearing of the jury and off the record.)

4 - - -

5 THE COURT: All right. Ladies and gentlemen,
6 as I indicated and thought I would tell you before
7 now, but where we are right now in the trial is that
8 I will give you the charge, the law that you are to
9 apply in this case, and then we have closing
10 arguments. So I am not available tomorrow. It's
11 due to my scheduling, I have something that I
12 scheduled a couple months ago and I can't
13 reschedule. So I will not be here tomorrow, which
14 means you won't be here either tomorrow, because I
15 think in the interest of time, it being 4 o'clock,
16 we'll just continue this on Monday.

17 Now, I normally would stay till 5:30, but
18 that might be pushing it. How does everybody feel
19 about that?

20 A JUROR: Great.

21 A JUROR: Let's get it done.

22 THE COURT: You'd rather go forward?

23 A JUROR: Yes.

24 THE COURT: Okay. Do you want to come up for
25 a second?

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(Thereupon, a discussion was had between Court and Counsel at sidebar outside the hearing of the jury and off the record.)

- - -

THE COURT: All right. Then, ladies and gentlemen, first you will hear closing arguments. You will first hear from the State of Ohio, then you will hear from Mr. Vick, representing the Defendant, and then, since the burden rests with the State of Ohio, the State of Ohio will have one final time to speak to you. Once we are concluded with our closing arguments, then I will give you the law that you are to apply to this case.

Now, when I read you the law, it will take about half-an-hour, half-an-hour to 35 minutes for me to charge you with the law. So we'll have the closing arguments and then we'll have the law that I will read to you. Okay?

All right. So first on behalf of the State.

MR. MIRANDA: Thank you, Your Honor.

- - -

1 FINAL ARGUMENT ON BEHALF OF THE STATE OF OHIO

2 MR. MIRANDA: Thank you all for your time and
3 patience. I promise to be relatively brief.

4 At the beginning of the case the Court read
5 to you the charge, which is what the Defendant is
6 accused of doing. And the Court is going to read
7 you that charge again. You might recall the
8 elements, but what the State has to prove is that
9 Mr. Novak knowingly used an electronic device or the
10 Internet to disrupt, interrupt, impair, a police
11 function. Okay.

12 So let's get some of the easy things out of
13 the way. Identity. There's no real dispute in this
14 case that Mr. Novak created the page. This is not a
15 whodunit. I think the evidence pretty fairly
16 establishes that Mr. Novak had the images on his
17 computer, he was sharing the page, and there's been
18 no -- that really hasn't been contested at all.

19 I think you'll also agree that to create the
20 Facebook page you would need to use the Internet or
21 an electronic device. So I think those elements are
22 fairly established by the evidence.

23 Let's talk about knowledge. First, there's
24 the appearance of the page. And we put up Exhibit
25 10 on the screen of the side by side of the real

1 page and the fake page. And I submit they look
2 pretty similar. The background was identical. The
3 profile picture with the badge was identical. And
4 the dissimilarities were in the headings, one said
5 "Police" and the other said "Community." So I
6 think the appearance by itself establishes or
7 suggests knowledge, that the Defendant knew people
8 were going to interpret this as the real page.

9 Second is the nature or the content of those
10 pages. The pages touch upon sensitive and divisive
11 issues, like abortion, homelessness, how police
12 interact with racial minorities. I submit to you
13 that they were purposely divisive in nature. That
14 was the point, to communicate in the guise of the
15 Parma Facebook page something which was going to be
16 controversial, that was going to generate public
17 response, in the form of calls, in the form of
18 shares, et cetera.

19 I think that you -- I think you would agree
20 that given the nature of the appearance of the page
21 and the nature of the content, the creator of that
22 page would know a likely result is that people would
23 contact the Parma Police Department about the
24 content on that page.

25 Third, you heard testimony that Mr. Novak

1 communicated with people about deleting comments,
2 about when people would post on the fake page, this
3 is fake, he would delete those comments. Okay. And
4 I think that establishes that this was not a joke,
5 this was not something that was done for humor.
6 This was done to fool people, to give the impression
7 that this was the real page. And that establishes
8 knowledge.

9 Fourth, I think you heard testimony that when
10 Parma put out its warning to the public about the
11 fake page, that warning was copied onto the fake
12 page. So an additional step that the Defendant took
13 to cast doubt on the authenticity of the real page.
14 And this is, again, this is something that happens
15 late into the day. Now he's aware of how it's being
16 received, he's aware that the Parma Police are aware
17 of it and they're disturbed by it, and he's still
18 continuing with the fake page.

19 Additionally, you heard the -- you heard the
20 dispatcher calls. Now, some of those dispatcher
21 calls came in and there was, you know, Hey, I think
22 that you've been hacked, this is a fake page. But
23 some of those calls, there was a back and forth
24 about, is this page real? And I think that that
25 also tends to establish knowledge.

1 So let's talk about the words disrupt,
2 interrupt, or impair. You heard testimony that five
3 dispatchers took calls in relation to this fake
4 page. This wasn't one isolated person who can't
5 take a joke or just calls to complain about
6 everything. This was ten calls. And that's five
7 dispatchers whose tasks were being interrupted. Did
8 the interruption result in a murder not getting
9 investigated? No. Did a 9-1-1 emergency, was there
10 a failure to respond to a 9-1-1 emergency? No. But
11 I submit to you that impairment does not mean
12 complete impairment. Their days were interrupted.
13 Their tasks were interrupted. And we're not talking
14 about one interruption. This was sustained, and it
15 was significant. We're talking about five calls.

16 The one call in particular, I'd ask you to
17 recall, you can actually hear the frustration in the
18 dispatcher's voice in explaining, at one point I
19 think the caller says, Shame on you, and then the
20 dispatcher says, No, not shame on us, it's fake. I
21 mean, this is -- she's trying, the dispatcher is
22 trying to explain to the caller that it was not a
23 real page.

24 You heard testimony that Detective Connor was
25 assigned to investigate this. Lieutenant Riley

1 testified yesterday that his worry was that the
2 mistaken fact, the fact that people didn't know the
3 fake site was real might lead to large gatherings,
4 and he mentioned the specific locations that were
5 talked about on the fake post, Giant Eagle and
6 St. Anthony's. So he was worried there was going to
7 be large gatherings there, protesters, that would
8 require police response.

9 He also mentioned the need to maintain the
10 authenticity of the real site. You will recall that
11 he testified that the Parma Police Department will
12 use the Facebook site to solicit information.
13 They'll put video surveillance up on the Facebook
14 site and say, Hey, has anybody seen this person?
15 Can you let us know if you have any clues about this
16 crime. And he also communicated about how the page
17 could be used in emergency situations.

18 So Connor, Detective Connor is assigned, and
19 he testified that he has active cases that he's
20 working. In fact, he specifically testified that he
21 had to change his day around. He was supposed to
22 execute a DNA search warrant, and so he had to
23 reschedule that to the end of the week. He
24 testified to all the steps he took to investigate
25 this crime, he contacted Facebook, he sent a

1 preservation letter, he obtained a search warrant
2 for the residence. When he executed the search
3 warrant, he had to seize items. He had to
4 photograph all of the items that were there.

5 He obtained a search warrant to search the
6 computers, which was eventually done by Detective
7 Klein. Those search warrants are reviewed by the
8 city law department. The search warrants were then
9 signed and approved by a judge or magistrate. And
10 Detective Klein testified that he performed an
11 analysis of the electronic devices in this case.

12 You heard from Detective Heinz that he was
13 involved in identifying early on Mr. Novak on this
14 case. So you have five dispatchers, you have a
15 lieutenant, you have three detectives in the bureau,
16 all of which who are occupying their time on this
17 case.

18 And lastly, I would remind you that
19 Lieutenant Riley indicated he issued a press release
20 in order to warn the public about the existence of
21 the fake page. So the department is spending a lot
22 of time and resources on something it shouldn't have
23 to be doing. It should be investigating real
24 crimes, but it needs to take down this fake page and
25 to restore the authenticity of the real page.

1 And so I would submit to you, when you take a
2 look at all the evidence, when you consider all the
3 testimony, that it's clear Mr. Novak knew he was
4 creating a page that was being perceived as the real
5 page, and he knew that the likely result of doing
6 that was that it would cause disruption,
7 interruption, or impairment to the Parma Police
8 forces. And so that's why we're going to ask you to
9 return a guilty verdict in this case.

10 THE COURT: All right. Thank you.

11 MR. MIRANDA: Thank you.

12 THE COURT: On behalf of the Defendant,
13 Mr. Vick.

14 MR. VICK: Thank you, Your Honor. Gary Vick
15 is going to do the closing.

16 - - -

17 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

18 MR. VICK: It's not what the evidence will
19 show, but what the evidence won't show. Ladies and
20 gentlemen of the jury, I told you that in my opening
21 argument, and I trust that at the conclusion of this
22 case you'll agree with me that this case is going to
23 rest on what the evidence didn't show.

24 On behalf of myself and Anthony, and his
25 family in the back, we do want to thank you. Thank

1 you for pushing us to get this over with today, and
2 thank you for being so attentive. I think this jury
3 was remarkably attentive throughout this process.

4 I also want to say that in the dozens of
5 cases that I have tried from this table, and just a
6 handful over here, because these cases don't really
7 go to trial unless absolutely necessary a lot of
8 times, the voir dire that we conducted and engaged
9 in was probably one of my favorite voir dires that
10 I've ever done, and I do mean that sincerely. And
11 as I was debating how to construct this closing
12 argument, you know, I was thinking of coming up with
13 something funny from Carlin or a comedian or some
14 type of quote, but the time for quotes and the time
15 for comedy is over. Okay. This needs to end now.

16 This case that the government brought against
17 Anthony, it's over, it needs to end now. Please
18 remember what I told you early on about all of these
19 amorphous concepts: he doesn't have to testify and
20 it can't be held against him; we don't have to do
21 anything or introduce any evidence; innocent; every
22 element beyond a reasonable doubt. It doesn't work
23 unless you put it into effect. And we are going to
24 submit, not only is there reasonable doubt, but
25 there's no evidence. None whatsoever.

1 No person shall knowingly use a computer or
2 the Internet so as to, in order to, the purpose of,
3 disrupting, interrupting, or impairing the functions
4 of the police. They spent a good day, witness after
5 witness, treating this as a whodunit. I told you in
6 opening argument he did it. He never hid from that.
7 It's his page. It's his real page, and the fake
8 page that he put up. Okay. But there was no
9 evidence that the only reason he did this was to get
10 the police. No evidence that the only reason he did
11 this was to interfere with the dispatchers, or to
12 interfere with Detective Connor, or to interrupt or
13 disrupt Detective Connor.

14 I talked about what you're going to have, and
15 I'm going to discuss right now two exhibits, that's
16 the press release from Lieutenant Riley and
17 Detective Connor's sworn testimony, his affidavit.
18 Make no mistake about it, this case is solely,
19 one-hundred percent about the content of the posts.
20 They got mad. That's why they prosecuted him, not
21 because he disrupted anything, not because he
22 interfered with anything.

23 Throughout the entirety of this case, and
24 look how they set it up, Lieutenant Riley takes the
25 stand, then the two detectives, and we had a

1 dispatcher, a nice dispatcher sat up here and talked
2 to you. They introduced into evidence ten, it was
3 eleven, eleven dispatch calls from ten people who
4 called. That's what they were relying on. Make no
5 mistake, that's what they claim the disruption was
6 at the start of this case and almost to the end of
7 it, but we're going to get into that.

8 The calls that they put up there, the
9 disruption to dispatch was that dispatch had to take
10 ten calls, 11.3 total minutes of those calls over a
11 12-hour period, less than one minute on average per
12 hour. But that's not the important part. Please
13 remember the function of dispatch is to do just
14 that. That's what it's for. That's what it exists
15 to do, to deal with farcical comments or farcical
16 concerns from the public, to deal with real concerns
17 from the public.

18 Okay. Lieutenant Riley stood up there and he
19 said, no question it is mine. And you can tell from
20 the dispatch audio tapes and the people that called,
21 he said the public was confused. Fantastic. You
22 are not going to see the words public and confused
23 anywhere in the jury instructions or from the
24 Court's mouth. Don't care. Doesn't matter. Not an
25 element of the crime. But they made a big deal out

1 of that, public confusion.

2 What they didn't spend any time on was police
3 disruption, or police impairment, or police
4 interference. They diverted the attention away from
5 the true issues in this case and went to all these
6 Facebook posts and all of this other evidence
7 instead of focusing on the job that we now have to
8 do. Okay.

9 Dispatch's job, its function, its purpose, is
10 to take calls, to direct officers to where they need
11 to go, to put people in place, to deal with 9-1-1
12 calls, to deal with the poor man whose cat's in the
13 tree, okay, and that's what she told you. She also
14 told you that they're taking on more dispatchers.
15 It has nothing to do with Anthony. They're bringing
16 on a new city. Cities are consolidating their
17 resources. Money's tight. That's why they're
18 getting more dispatchers.

19 This dispatcher didn't testify that she was
20 interrupted, disrupted, or impaired. Her function
21 -- there can be no evidence and there can be no
22 claim that she was disrupted or interfered with,
23 because that's her job. You can't interfere or
24 disrupt that which she's hired and paid to do, which
25 is to take calls from the public. There's no

1 evidence that dispatch, as a police function, was
2 interfered with, interrupted, disrupted, or
3 impaired.

4 In the event you think there may be, where is
5 the evidence that any dispatcher was unable to do
6 something? I asked her, and she said, this didn't
7 prevent me from taking another call. I didn't have
8 to quit, I didn't have to leave my job, we didn't
9 have to call anybody else in. She wasn't prevented
10 from doing anything.

11 Then, after they set their whole case up
12 around this dispatcher and all these calls and rely
13 on all of that information to craft their case
14 around that function being impaired, then we get to
15 Detective Connor who comes up here after sitting
16 through all the witnesses and seeing the dispatcher
17 was terrible, after seeing how poorly she testified
18 for their case, Detective Connor comes up and throws
19 in the buccal swab right in the middle of the case.
20 Never heard of it before. First time we heard about
21 it was on the stand. And I submit to you that I
22 don't even have to give any argument on that, but
23 for the fact that he's a detective. If this
24 situation arose from a plain clothes civilian, you
25 would have thrown it out a long time ago. And I

1 trust that you've already thrown it out in your
2 heads.

3 Focus back, with respect to the buccal swab,
4 to what I talked to him about. His report, his
5 investigative report, it covered about a month-and-
6 a-half's worth of time, a month-and-a-half's worth
7 of work, a month-and-a-half's worth of
8 investigation. And he told me, the important things
9 go in there. Okay. The elements of a crime go in
10 there. Okay. The material facts of a case, they go
11 in there. That's not in there. It's nowhere to be
12 found. And he admitted it. Okay.

13 More importantly is the search warrant, which
14 you'll have, the search warrant affidavit. And
15 Detective Connor testified that these are very
16 important. And they are important, because if a
17 judge or a magistrate doesn't think you have enough,
18 you're not getting it. And if you don't get that
19 search warrant for the house, you're not getting the
20 equipment, you're not getting the computer, you're
21 not getting the DVDs, or the Play Station, or the
22 Xbox. And you heard him say how important those
23 items are, because there's no case unless he can put
24 him in front of that computer or behind the cell
25 phone. The Facebook pages are nice, they're very

1 handy. Okay. They tell this amorphous Anthony
2 Novak, but they got to put him there, they got to
3 tie him in with those pages. Hey, they waited
4 forever to go do it. Okay.

5 And B, to prove the probable cause of the
6 crime, the key facts and elements are in here. Yet,
7 what does he say in paragraph 5? "The user further
8 disrupted and impaired the function of the Parma
9 Police Department by knowingly posting false
10 information." Content again. Not any action, not
11 any knowledge or intent. That's content. No
12 mention of buccal swab. Come on, we're all
13 reasonable people, use your common sense. If the
14 buccal swab thing really happened, it would be
15 somewhere, it would be in this report, it would be
16 in the affidavit to the search warrant. Trust me on
17 that one.

18 If the buccal swab thing really happened, he
19 would have produced a calendar. They would have
20 walked the kid in here and said, yeah, he canceled
21 on me, I was ready to go, I was ready to have my
22 mouth swabbed. You would have seen the search
23 warrant. Okay. But more importantly, remember what
24 Detective Connor said in his direct, I didn't have
25 anything else to do that day. Yet, after sitting

1 through the witnesses and seeing how the case was
2 coming in, that thing comes out at the eleventh
3 hour. That didn't happen.

4 And you're going to have the Defendant's
5 exhibits back there. This case is about content,
6 about vulgarity towards the police and the fact that
7 they didn't like the posts. Detective Riley's own
8 words in the press release, nothing with, our
9 dispatch was overwhelmed, Detective Connor couldn't
10 do a buccal swab, nobody could do their job, we were
11 impaired, functions were all in haywire. No. He
12 posted derogatory and inflammatory information.
13 Nothing with respect to the elements you have to
14 find that they proved beyond a reasonable doubt.
15 The search warrant affidavit, nothing about buccal
16 swabs, nothing about phone calls, just a conclusion
17 that in the detective's mind these things were
18 impaired or disrupted.

19 This is content based. How do you know it's
20 content based? "Fuck the Parma Police." That's
21 what he put in there. The important things go in
22 there. Ladies and gentlemen, you are all smart
23 people. The important things in this case, no
24 mention of buccal swab, vulgarity towards the
25 police. They didn't like it, he took the picture

1 from theirs, and they went after him and they got
2 him.

3 You heard the testimony, when they executed
4 the search warrant, the poor roommate's on the
5 toilet. They come in, guns ablaze, looking for all
6 the evidence they can get, three weeks after the
7 charge -- three weeks after they had the Facebook
8 documents as it was.

9 They had already arrested him coming out of a
10 store. Sent him to jail. They then, without any
11 evidence like we discussed, decided to charge him
12 with disrupting public service. Their computer
13 systems were all intact. Their page was intact.
14 Security system is intact. Phone system is intact.
15 9-1-1 is intact. Nothing was hacked. No large
16 crowds. No one showed up at the church, either
17 pedophile or against pedophiles. No one showed up
18 to have an abortion. No Right-to-Lifers showed up.

19 Riley's concerned that his officers are in
20 danger. Riley's concerned that all these people are
21 going to show up. Really? You heard him say, no
22 reasonable department could ever put this
23 information out. And they made a big deal about,
24 Detectives, did you ever have a law that you can't
25 feed the homeless? Really? Again, it's a horrible

1 word, but nobody ever accused them of having an
2 actual law where they're going to give abortions or
3 not to feed the homeless. That's the absurdity of
4 the posts. Okay.

5 The fact that the posts or information from
6 his page were taken from the real page, or borrowed
7 from the real page, and we talked about it in voir
8 dire, that's the definition of a good parody.

9 As Anthony sits here, okay, you may not like
10 the way he looks. You may not like what he did.
11 Okay. Comedy is offensive. Some people listen to
12 it, some people don't. You may not like the way I
13 handled the case. Okay. You may not like the fact
14 that Mr. Proctor didn't get up and do anything.
15 But, please, look at the evidence, look at the lack
16 of evidence. The lack of evidence in this case, I
17 told you that, and I knew I could prove it. Okay.
18 Not what the evidence will show, but what the
19 evidence won't show.

20 Just because he didn't testify doesn't mean
21 we didn't fight like hell. I think we did.

22 Ladies and gentlemen, at the end of the day,
23 I -- Anthony is asking you, put into effect these
24 amorphous concepts. It's now in your hands. Stop
25 this behavior from the government. They can't get

1 offended when people make fun of them. There's no
2 law like that you're going to hear. There's no
3 disruption, interruption, or impairment. Please --
4 innocent. They proved nothing, let alone beyond a
5 reasonable doubt. Please find him not guilty.

6 Thank you.

7 THE COURT: Thank you. And now for your
8 final argument, on behalf of the State.

9 MS. WOODS: Thank you, Your Honor.

10 - - -

11 FINAL CLOSING ARGUMENT ON BEHALF OF THE STATE OF OHIO

12 MS. WOODS: Ladies and gentlemen of the jury,
13 it's been expressed once from the State and once
14 from the Defense attorney, but again, thank you.
15 This was a long, tedious process over the last
16 couple days with a lot of information thrown at you,
17 and a lot of words, and a lot of sitting around
18 where it would be easy to doze off, but you didn't.
19 And we greatly appreciate that from the State as
20 well.

21 The Defense wants you to think that just
22 because we weren't in a state of an emergency that
23 they weren't interrupted, that the dispatchers
24 couldn't be interrupted. Ladies and gentlemen, they
25 were interrupted, they were taking calls about a

1 person who had created a page claiming to be the
2 Parma Police Department, arguing about laws that
3 were put into effect.

4 Ladies and gentlemen, you will get to take
5 back with you State's Exhibit 10. And, ladies and
6 gentlemen of the jury, you can see it is the same.
7 It's not the content. Sure we can see the joke now,
8 but in the moment the dispatchers couldn't see the
9 joke, because there was no joke. It wasn't a widely
10 spread -- it wasn't a tightly held secret that this
11 was a joke, or in amongst friends, no. The
12 Defendant took action to confuse and to make this.
13 As soon as he made the page to make it look exactly
14 like the Parma Police Department's page, he took the
15 integrity from the Parma Police Department's page.
16 He disrupted their ability by changing posts about
17 real crimes. He took an aggravated robbery post,
18 where somebody was held at knifepoint, and changed
19 it into a racial claim.

20 Ladies and gentlemen, he took -- when there
21 was a difference, he had the word "The" up there,
22 which would have distinguished it, maybe not well,
23 but it would have distinguished it. No. The
24 Defendant took action and made it exactly the same.

25 Ladies and gentlemen, he took action, when

1 people would say this is a fake site, to delete
2 those comments. And he would take action by saying,
3 Is it a legit site, when he was asked on his page,
4 the answer, from his own mouth, Yeah.

5 He wanted the people to think that was the
6 Parma Police Department, and so people did. And
7 they called, and you heard in those 9-1-1 calls, I
8 don't know who else to call, are you really doing
9 this? Had that been a joke, and had it been obvious
10 to everybody that this is a joke and that this is
11 funny, those calls wouldn't have come in.

12 So it's the Defendant's actions in creating
13 the exact mimicking thing with nothing to
14 distinguish it that is obvious that created the
15 disruption. Sure it's the dispatcher's job to take
16 calls, but it's for somebody who needs help. And
17 here people are saying, I don't know who else to
18 call, did you really pass this law? And yes, it is
19 Detective Connor's duty to investigate crimes, but
20 he had to put other things on the back burner. He
21 told you he had three active cases that were really
22 high priority and nothing on those got done on that
23 day because he had to worry about taking down the
24 exact duplicate.

25 And sure there was a delay from the time it

1 was taken down until the search warrant was
2 executed. As Detective Connor told you, what would
3 happen if they hit the wrong house?

4 Ladies and gentlemen, we've all seen jokes on
5 Facebook, and in voir dire we talked about, what do
6 you see when there's something offensive, and it
7 wasn't the content of the post, it wasn't obvious.

8 Ladies and gentlemen, you're also going to
9 take back with you State's Exhibit No. 21. "Due to
10 the slow increase of the homeless population in our
11 city, the Parma Police Department is pleased to
12 announce that it will be introducing a new temporary
13 law." 761 comments, over a thousand shares, ladies
14 and gentlemen. This wasn't a joke among friends.
15 This was disseminated for the public, and the public
16 responded. And, therefore, because of the public's
17 response to his joke, he took away the detectives
18 from their duties, he took away dispatchers from
19 entering warrants. Sure, it's only a few seconds or
20 a few minutes at a time, but they all told you they
21 had full days planned and scheduled.

22 Ladies and gentlemen, he disrupted public
23 services. He took away their ability to do it. Had
24 it been obvious parody, or obvious, we wouldn't be
25 here. In hindsight now, we can see it's obviously a

1 joke, but back on March 2nd nobody was laughing,
2 they were busy trying to do the jobs that we, the
3 taxpayers, pay them to do. They're paid to be
4 dispatchers and answer calls, even if it is for
5 something frivolous about a cat up a tree, but it is
6 somebody who needs help, not answering questions as
7 to whether Parma has passed a law about homeless
8 people.

9 This could have been an easy fix on the part
10 of the Defendant, use a different picture, do
11 something once he realized that it was true.
12 Instead, he did the exact opposite. And, ladies and
13 gentlemen, because of the Defendant's actions in
14 creating this fake Parma Police Department Facebook
15 page and taking precious time from our dispatchers,
16 our police department, and spending time doing
17 things that wouldn't have needed to be done without
18 the Defendant's actions, we request and say that you
19 find the Defendant guilty of disrupting public
20 services, because he knew what he was doing and he
21 let the joke get out of hand and continued to
22 perpetuate the joke. 761 people don't know that
23 it's a joke.

24 Thank you.

25 THE COURT: Okay. Thank you.

1 Would the lawyers approach for one moment?

2 MR. VICK: Yes, Your Honor.

3 - - -

4 (Thereupon, a discussion was had between
5 Court and Counsel at sidebar outside the
6 hearing of the jury and off the record.)

7 - - -

8 THE COURT: All right.

9 Now, ladies and gentlemen, it is my duty to
10 instruct you on the law.

11 Members of the jury, ladies and gentlemen, at
12 this time you have heard the evidence and arguments
13 of counsel.. It now becomes my duty to instruct you
14 on the law to apply to this case. The Court and the
15 jury have separate functions. You decide the
16 disputed facts, and the Court provides the
17 instructions of law.

18 It is your sworn duty to accept these
19 instructions and to apply the law as it is given to
20 you. You are to apply the law as your guide
21 throughout your entire deliberations and apply it to
22 the facts, as you find the facts to be, and then
23 render your judgment accordingly.

24 This you are required to do, independent and
25 apart from any notion or opinion which you may have

1 ever possessed as to what the law is or what the law
2 ought to be, concerning the facts in this particular
3 case. Therefore, you are not permitted to change
4 the law or to apply your own idea of what you think
5 the law ought to be.

6 It also follows, that in strict keeping with
7 your oath, you refuse absolutely to be moved, swayed
8 or influenced by any consideration such as sympathy
9 for or bias or prejudice against either the State of
10 Ohio or the Defendant in this case.

11 A criminal case begins with the filing of an
12 indictment by the grand jury. This indictment
13 informs the Defendant that he or she has been
14 charged with a crime. The indictment may not be
15 considered for any other purpose.

16 The plea of not guilty is a denial of the
17 charge and puts into issue the essential elements of
18 the crime or crimes charged in the indictment.

19 At the very outset, the jury will understand
20 that the mere fact a defendant has been charged by
21 the grand jury of this county raises no presumption
22 of the guilt of the Defendant. The indictment
23 itself is simply the means created by law for
24 presenting, in a formal way, a criminal charge. You
25 will not consider the fact that the indictment has

1 been made as in any way constituting evidence of
2 guilt of the Defendant.

3 At the beginning of the trial, counsel for
4 the State and the Defense addressed the jurors in
5 opening statements. In the opening statements both
6 counsel outlined what they believed the evidence
7 would show during trial.

8 When the presentation of all the evidence was
9 completed, counsel for the State and counsel for the
10 Defendant addressed the jury in closing arguments.
11 In those closing arguments, they set forth and
12 developed theories and conclusions which they
13 believe may reasonably be drawn from all the
14 evidence in this case.

15 The opening statements and closing arguments
16 are to assist the jury to understand and reach
17 conclusions on the issues which the jury is to
18 decide. You are instructed that the opening
19 statements and closing arguments do not constitute
20 evidence in this case, and they will not be
21 considered as evidence by the jury.

22 The evidence does not include the grand jury
23 indictment, the opening statements, or closing
24 arguments of counsel. Further, the evidence does
25 not include any answers to questions that I have

1 instructed you to disregard.

2 You must not speculate as to why the Court
3 sustained an objection to any question or what the
4 answer to such question might have been had I
5 permitted the witness to answer the question. You
6 must not draw any inferences or speculate on the
7 truth of any suggestion included in a question that
8 was not answered by the witness.

9 What then is evidence in this case? Whenever
10 reference is made to evidence upon which the case is
11 to be decided, the jury will understand that by
12 evidence we mean testimony from the witnesses, the
13 exhibits admitted during trial, and any facts agreed
14 to by counsel.

15 Evidence may be either direct or
16 circumstantial, or a combination of both.

17 Direct evidence is testimony given by a
18 witness who has seen or heard the facts to which he
19 or she has testified. It includes the exhibits
20 accepted as evidence during the trial, and any
21 stipulations.

22 Stipulations. There were certain agreements
23 known as stipulations. These stipulations were
24 reached between the State and the Defendant and are
25 to be accepted by you as facts.

1 The State of Ohio and counsel for the
2 Defendant do stipulate and agree that the calls
3 placed into dispatch are authentic and admissible
4 evidence. The calls were taken by several
5 dispatchers and are recorded in the ordinary course
6 of business. Detective Connor made a copy of all
7 the calls received.

8 The State of Ohio and counsel for the
9 Defendant do stipulate and agree that the records
10 obtained from Facebook are true and accurate copies
11 of the records kept in the ordinary course of
12 business. The State and counsel for the Defendant
13 do further agree and stipulate that the records
14 provided are admissible. The State of Ohio and
15 counsel for the Defendant do stipulate that Facebook
16 maintains in their records deleted comments and
17 posts for a period of time after deletion.

18 If a witness testified from personal
19 knowledge to the commission of an act to be proven
20 or in order to establish a defense, this is called
21 direct, positive, or eyewitness evidence.

22 It is not always possible to ascertain the
23 truth by evidence of this direct character;
24 therefore, the law permits the introduction and
25 consideration of what is called circumstantial

1 evidence.

2 By circumstantial evidence we mean proof of
3 certain facts and circumstances from which the jury
4 may infer other connected facts which usually and
5 reasonably follow according to the common experience
6 of mankind.

7 It is either by a process of reasoning or as
8 a result of common experience that you may conclude
9 that when certain facts exist, certain other facts
10 usually coordinate with them. A conclusion so
11 deduced or drawn from a proven fact or facts is what
12 we refer to as an inference.

13 In considering the evidence in this case,
14 either direct or circumstantial, you may draw
15 inferences from proven facts. You are instructed,
16 however, that you are not permitted to base one
17 inference upon another inference. Each inference
18 must be predicated or based upon a proven fact or
19 set of facts. Two or more inferences may be drawn
20 from the same proven facts or by adding other facts
21 or circumstances in evidence.

22 Circumstantial evidence. You may consider
23 direct and circumstantial evidence. Direct evidence
24 is the testimony of one who has actual knowledge of
25 a fact, such as an eyewitness. If you look outside

1 the window during the night and see snow falling,
2 your observation that it is snowing is direct
3 evidence of the fact that it snowed.

4 As we've just said, circumstantial evidence
5 is evidence which tends to prove a disputed fact by
6 proof of facts which have a legitimate tendency to
7 lead the mind to a conclusion that the fact exists.

8 As an example of circumstantial evidence,
9 when you retire to go to bed at night, you look
10 outside the window, you see the ground is clear.
11 When you wake up in the morning, however, you find
12 that the ground is covered by a blanket of snow.
13 Now, you did not see it snow, but from the fact that
14 you find a blanket of snow on the ground the next
15 day, you are justified in making the reasonable
16 inference that it snowed during the night. Your
17 conclusion that it snowed during the night is
18 circumstantial evidence of the fact that it snowed.

19 The law makes no distinction between the
20 weight to be given to either direct or
21 circumstantial evidence. The law requires only
22 that, after weighing all the evidence, the jury must
23 be convinced of the guilt of the Defendant beyond a
24 reasonable doubt. Circumstantial and direct
25 evidence inherently possess the same probative

1 value. In some instances, certain facts can only be
2 established by circumstantial evidence.

3 Evidence excluded. The evidence does not
4 include the pleadings or any statement of counsel
5 made during the trial, unless such statement was an
6 admission or agreement admitting certain facts. The
7 opening statements and closing arguments of counsel
8 are designed to assist you and they are not
9 evidence.

10 Evidence stricken. Statements or answers
11 ordered stricken, or to which the Court sustained an
12 objection, or which you were instructed to
13 disregard, are not evidence and must be treated as
14 though you never heard them.

15 Objections and speculation. You must not
16 guess why the Court sustained the objection to any
17 question or what the answer to such question might
18 have been. You must not consider as evidence any
19 suggestion included in a question that was not
20 answered.

21 Credibility. You, the jury, are the sole
22 judges of the facts, of the credibility of
23 witnesses, and of the weight to be given to the
24 testimony of each witness. To weigh the evidence,
25 consider the credibility or believability of each

1 person testifying. Apply the tests for truthfulness
2 which you apply in your daily lives.

3 To determine the credibility of a witness,
4 consider the interest or bias the witness has in the
5 outcome of the verdict; the witness's appearance,
6 manner, and demeanor while testifying before you;
7 the witness's candor and frankness, or lack of
8 candor and frankness; the consistency of the
9 witness's testimony with other known facts in the
10 case; the witness's accuracy of memory, or
11 inaccuracy of memory; the witness's intelligence or
12 lack of intelligence; the reasonableness or
13 unreasonableness of the witness's testimony; the
14 opportunity the witness had to see or hear or know
15 the truth of the facts and circumstances concerning
16 the things to which the witness has testified; and
17 any or all other facts and circumstances surrounding
18 the testimony which, in your judgment, would add or
19 detract from the credibility and weight of the
20 witness's testimony.

21 Applying these tests, assign to the testimony
22 of each witness the weight which you determine to be
23 proper. You are instructed that you are not bound
24 to believe something to be a fact simply because it
25 is testified to by a witness. If you believe from

1 all the evidence that a witness is mistaken or
2 testifies untruthfully to a fact, you are not
3 required to believe the testimony simply because the
4 witness is under oath.

5 It is within your province as a juror to
6 determine, in the exercise of your honest and
7 impartial judgment, what testimony is worthy of
8 belief and what testimony is not worthy of belief.
9 You may believe a portion of the testimony of a
10 particular witness and disbelieve the rest of his or
11 her testimony. You may believe all the testimony of
12 a particular witness, or you may disbelieve all the
13 testimony of a particular witness.

14 Ladies and gentlemen of the jury, in this
15 case, as in all other cases, you must give primary
16 consideration to the quality of the evidence. The
17 quality of the evidence may or may not be the same
18 as the quantity of the evidence, that is, the number
19 of witnesses or exhibits presented in this case.

20 The burden of proof. Every person accused of
21 an offense is presumed innocent until proven guilty
22 beyond a reasonable doubt, and that burden is on the
23 State of Ohio.

24 Reasonable doubt. The legislature of Ohio
25 has been so concerned that in a criminal case [sic]

1 understand the correct legal meaning of the term
2 reasonable doubt that it has by statute defined that
3 term and given to the trial court the duty of
4 reading that definition verbatim to the jury in a
5 criminal case.

6 Ohio Revised Code Section 2901.05 defines
7 reasonable doubt, and it reads as follows: "Every
8 person accused of an offense is presumed innocent
9 until proven guilty beyond a reasonable doubt, and
10 the burden of proof is upon the prosecution.
11 Reasonable doubt is present when the jurors, after
12 they have carefully considered and compared all the
13 evidence, cannot say that they are firmly convinced
14 of the truth of the charge. It is a doubt based on
15 reason and common sense. Reasonable doubt is not
16 mere possible doubt because everything relating to
17 human affairs or depending on moral evidence is open
18 to some possible or imaginary doubt. Proof beyond a
19 reasonable doubt is proof of such character that an
20 ordinary person would be willing to rely and act
21 upon it in the most important of the person's own
22 affairs."

23 The Defendant does not testify. It is not
24 necessary that the Defendant take the witness stand
25 and testify in his own defense. He has a

1 constitutional right not to testify. The fact that
2 he did not testify must not be considered by you for
3 any purpose whatsoever.

4 Exhibits. A number of exhibits and testimony
5 relating to them have been introduced. First,
6 members of the jury, the numbering or lettering of
7 the exhibits that you take to the jury room may not
8 follow consecutively. There are several reasons for
9 this. Some exhibits may not have ultimately been
10 introduced by the party producing it, or the Court
11 might not have accepted the exhibit because of a
12 legal or procedural reason and ruling. Do not
13 conjecture or attempt to draw any inference because
14 you do not have a particular exhibit.

15 Photographs. Certain photographs and
16 testimony related to them have been received into
17 evidence. You will consider whether or not these
18 photographs accurately depict the conditions and
19 objects which they purportedly represent. You will
20 determine what weight, if any, the photographs
21 should receive in light of all the evidence.

22 The indictment. Disrupting public services,
23 Ohio Revised Code 2909.04(B). The Defendant,
24 Anthony Novak, is charged in the indictment with
25 disrupting public services, in violation of Ohio

1 Revised Code section 2909.04.

2 Before you can find the Defendant guilty, you
3 must find beyond a reasonable doubt that on or about
4 the 2nd day of March, 2016, and in Cuyahoga County,
5 Ohio, the Defendant did knowingly use any computer,
6 computer system, computer network,
7 telecommunications device, or other electronic
8 device or system or the Internet so as to disrupt,
9 interrupt, or impair the functions of any police,
10 fire, educational, commercial, or governmental
11 operations.

12 Knowingly defined. A person acts knowingly,
13 regardless of purpose, when the person is aware that
14 the person's conduct will probably cause a certain
15 result or will probably be of a certain nature. A
16 person has knowledge of circumstances when the
17 person is aware that such circumstances probably
18 exist. When knowledge of the existence of a
19 particular fact is an element of an offense, such
20 knowledge is established if a person subjectively
21 believes that there is a high probability of its
22 existence and fails to make inquiry or acts with a
23 conscious purpose to avoid learning the fact.

24 Computer. "Computer" means an electronic
25 device that performs logical, arithmetic, and memory

1 functions by the manipulation of electronic or
2 magnetic impulses. Computer includes, but is not
3 limited to, all input, output, processing, storage,
4 computer program, or communication facilities that
5 are connected, or related, in a computer system or
6 network to an electronic device of that nature.

7 Computer system. "Computer system" means a
8 computer and related devices, whether connected or
9 unconnected, including, but not limited to, data
10 input, output, and storage devices, data
11 communications links, and computer programs and data
12 that make the system capable of performing specified
13 special purpose data processing tasks.

14 "Computer network" means a set of related or
15 remotely connected computers and communication
16 facilities that includes more than one computer
17 system that has the capability to transmit among the
18 connected computers and communication facilities
19 through the use of computer facilities.

20 Telecommunications device.

21 "Telecommunications device" means any instrument,
22 equipment, machine, or other device that facilitates
23 telecommunication, including, but not limited to, a
24 computer, computer network, computer chip, computer
25 circuit, scanner, telephone, cellular telephone,

1 pager, personal communications device, transponder,
2 receiver, radio, modem, or device that enables the
3 use of a modem.

4 Internet. "Internet" means the international
5 computer network of both federal and nonfederal
6 interoperable packet switched data networks,
7 including the graphical subnetwork known as the
8 world wide web.

9 If you find that the State proved beyond a
10 reasonable doubt all the essential elements of the
11 offense of disrupting public services as charged in
12 the indictment, your verdict must be guilty,
13 according to your findings.

14 If you find that the State failed to prove
15 beyond a reasonable doubt any one of the essential
16 elements of the offense of disrupting public
17 services as charged in the indictment, then your
18 verdict must be not guilty, according to your
19 findings.

20 Deliberation and admonition. The Court
21 reminds you not to discuss this case. You are
22 reminded also not to obtain or receive information
23 concerning this case from outside the courtroom, and
24 you must not read, listen to, or watch any source of
25 information relating to this case. You must report

1 to the bailiff or the Court any attempt by anyone to
2 discuss this case with you or in your presence. And
3 any violation of this order could result in serious
4 penalties under the law.

5 Motive. Proof of motive is not required.
6 The presence or absence of motive is one of the
7 circumstances bearing upon purpose or knowledge.
8 Where an act is a crime, a good motive or purpose is
9 not a defense.

10 Time. The date the offense in this
11 indictment allegedly occurred has previously been
12 stated. It is not necessary that the State prove
13 that the offense was committed on the exact day as
14 charged in the indictment. It is sufficient to
15 prove that the offense took place on the date
16 reasonably near the date claimed.

17 Punishment. You may not discuss or consider
18 the subject of punishment. Your duty is confined to
19 the determination of the guilt or lack of guilt of
20 the Defendant. In the event you find the Defendant
21 guilty, the duty to determine punishment is placed,
22 by law, upon the Court.

23 Unanimous verdict. Because this is a
24 criminal case, the law requires that all 12 of you
25 be in agreement before you can consider that you

1 have reached a verdict.

2 Verdict. You have one verdict form. And I'm
3 going to show it to you and I'm going to read it to
4 you, but it is self-explanatory. It states, State
5 of Ohio versus Anthony Novak. Disrupting Public
6 Services. Jury Verdict. We, the Jury in this case,
7 being duly impaneled and sworn, do find the
8 Defendant, Anthony Novak -- there's an asterisk, and
9 you will insert in ink guilty or not guilty of
10 disrupting public services, a violation of
11 2909.04(B) of the Ohio Revised Code as charged in
12 the indictment.

13 There is a line for all 12 of you to sign,
14 and your foreperson will sign first. And I will
15 explain that to you momentarily.

16 Jury deliberations. During your
17 deliberations, you will be under the control of the
18 bailiff. You will not be permitted to separate
19 without permission from the Court or the bailiff.
20 When you leave the jury room for a break, for lunch,
21 or for going home, all deliberations must cease
22 until every juror is back in the jury room and the
23 door is closed.

24 At any time your deliberations are
25 interrupted, for example, for a break, lunch, or at

1 the end of the day, any comment concerning the case
2 or the status of your deliberations would be
3 improper and could prejudice the rights of either
4 party.

5 You may take breaks in the jury room area,
6 but you may not leave the jury room area without
7 prior permission from the Court. If you take a
8 break, all deliberations must cease until all jurors
9 are back in the jury room and the door is closed.

10 Upon your discharge for lunch or at the close
11 of the day, the foreperson is directed to deliver to
12 the bailiff all exhibits and any other papers. The
13 bailiff will hold them until your return.

14 During any break in the deliberation process,
15 remember that you are a member of a deliberating
16 jury. You may not investigate or attempt to gain
17 additional facts about the case in any way. It
18 would be improper for anyone to attempt to do so,
19 and may subject the juror involved to personal
20 penalty.

21 While you are deliberating, each of you
22 should give careful consideration to the views of
23 your fellow jurors present. Do not turn a deaf ear,
24 or without listening to their reasons or arguments,
25 obstinately stand on your own opinion. You should

1 deliberate with the objective of reaching an
2 agreement, if you can do so without disturbing your
3 individual judgment. Each of you must decide this
4 case for yourself, but should do so only after
5 discussion and consideration of the case with your
6 colleague jurors.

7 You should not hesitate to change an opinion
8 if you become convinced that it is wrong. However,
9 you should not surrender honest convictions in order
10 to be congenial or to reach a verdict solely because
11 of the opinion of other jurors.

12 Procedures in your jury room. Upon your
13 retirement, you will immediately proceed to select
14 one to be the foreman or forewoman of the jury.
15 That person will preside over your deliberations,
16 but has no greater authority or power than any other
17 member of the jury. The Court charges the
18 foreperson with the responsibility of confining the
19 discussions in the jury room to the law and the
20 evidence in this case.

21 Additionally, it is his or her responsibility
22 to see that each member of the jury is permitted to
23 express his or her opinion and enter fully into
24 discussion with all other members.

25 The foreperson is also charged with the task

1 of returning to the courtroom all of the exhibits,
2 the completed verdict form, and any written
3 communications between the Court and the jury.

4 Also, if you receive the answer to a question
5 in writing from the Court, be certain that you save
6 the question and the answer and return it to the
7 bailiff when your deliberations are concluded.

8 Your deliberations. You must not be
9 influenced by any consideration of sympathy or
10 prejudice. It is your duty to carefully weigh the
11 evidence, decide all disputed questions of fact,
12 apply the instructions of the Court to your
13 findings, and give your verdict accordingly. In
14 fulfilling your duty, your efforts must be to arrive
15 at a just verdict. Consider all the evidence and
16 make your findings with intelligence and
17 impartiality, and without sympathy, bias, or
18 prejudice, so that the State of Ohio and the
19 Defendant will both feel that their case was fairly
20 and impartially tried.

21 If, during the course of this trial, the
22 Court said or did anything that you consider an
23 indication of my view on this case, you are
24 instructed to disregard it during your
25 deliberations. This case is solely yours to decide.

1 If you have a question about these
2 instructions -- and I will tell you now, these
3 instructions are going back with you. So what I
4 have just read to you is going with you. You just
5 are not permitted to use it as scratch paper, a note
6 pad, crumble it up. It has to come back to me in
7 the same way as it goes with you. Okay. So they
8 are going with you.

9 So if you have a question about these
10 instructions, it should be discussed first in the
11 privacy of your jury room. If you disagree as to
12 the meaning of these instructions, it may be
13 possible under certain conditions to review those
14 matters by a request to the Court.

15 If you desire to address any communication to
16 the Court, you must reduce it to writing and have it
17 signed by the foreman. The question will usually be
18 answered in open court. If answered in writing,
19 save the question and answer with the evidence.

20 After you have reached a verdict, you will
21 contact this room through the bailiff, and your
22 verdict will be read in open court. This Court has
23 a two-buzz system. One buzz means you have a
24 question, and two buzzes means you have a verdict.
25 And I am sure you figured out where that buzzer is.

1 THE JURY: Uh-huh.

2 THE COURT: Yes. Okay. Please know that
3 whether you have a question or a verdict, the Court
4 is required to contact the attorneys and/or the
5 court reporter, so there may be a brief delay.

6 Now my remarks are to our alternate juror.
7 On behalf of all of us involved, we all want to
8 thank you so much for your diligence throughout this
9 entire case. And since all of our jurors have been
10 able to attend court regularly and are here with us
11 today, you will be excused; sort of. So what that
12 means is that while the jury is deliberating, you
13 will be on the fourth floor. And as soon as a
14 verdict is rendered, you will be permitted to come
15 back and be in court for the reading of that
16 verdict.

17 So you will be on the schedule for this jury,
18 and don't worry because we know you're down there,
19 so you won't be forgotten. But, again, we all want
20 to thank you so much for your faithful
21 participation. And I have to still advise you that
22 you are to refrain from any discussion of this case
23 and from expressing any opinions that you might have
24 relative to the merits of this case until a verdict
25 of the jury has been returned in open court.

1 So, again, we want to thank you so much.

2 All right. Jurors, when you get to the jury
3 room, you will find that you have all the exhibits
4 with you, and those are the ones that have been
5 actually admitted into evidence. You will also have
6 with you the verdict form. You will not be given
7 any others during your deliberations.

8 I have outlined the essential elements of the
9 offense charged in this indictment. I could not
10 include all the law in any single part of these
11 instructions. You must consider each part in the
12 light of and in harmony with all the instructions.

13 If you find that the State has proved beyond
14 a reasonable doubt all the essential elements of the
15 offense that has been described, then you must find
16 the Defendant guilty of the offense charged,
17 according to your findings.

18 If after considering all the evidence you
19 find that the State failed to prove beyond a
20 reasonable doubt any one or more of the essential
21 elements of the offense charged, then your verdict
22 must be not guilty of such offense, according to
23 your findings.

24 Ladies and gentlemen of the jury, after your
25 verdict is returned and you are discharged as jurors

1 in this case, you may discuss it with anyone.
2 However, whether or not you do so is a matter of
3 your own personal preference.

4 After you have reached a verdict, each of you
5 will sign the verdict form that agrees with your
6 findings. Then you will contact the Court through
7 the bailiff. At that time, you will be brought back
8 into court and I will read your verdict.

9 Ladies and gentlemen, you are here for one
10 purpose and one purpose only, and that is to
11 ascertain the truth, the whole truth, and nothing
12 but the truth in this case as nearly as the truth in
13 human affairs can be found.

14 The law in constituting a jury of 12 jurors
15 contemplates that each and every one of you shall
16 give your individual consideration to and judgment
17 upon the evidence. The rules of law which are
18 explained to you in these instructions are binding
19 upon the individual conscience and judgment of each
20 member of the jury.

21 You should have in mind two propositions of
22 equal importance. First, the laws are enacted for
23 the benefit of all members of organized society, and
24 when a jury is convinced beyond a reasonable doubt
25 of a Defendant's guilt, the jury should so say in

1 its verdict. And second, no defendant should be
2 convicted of a crime when the jury is not convinced
3 of such defendant's guilt beyond a reasonable doubt.

4 Having carefully weighed all the evidence in
5 this case and applied the law as stated in these
6 instructions, let your verdict be fair and
7 impartial, thus assuring that you have been mindful
8 of your oath to well and truly try and true
9 deliverance make between the State of Ohio and the
10 Defendant in this case.

11 This case is now in your hands for a verdict.

12 All rise for the jury.

13 - - -

14 (Thereupon, the jury retired to
15 consider its verdict.)

16 - - -

17 THE COURT: All right. So if you can just
18 collect the exhibits -- you have all of them
19 collected?

20 MS. WOODS: They're all collected, Your
21 Honor.

22 THE COURT: Did you review them? And make
23 sure all the exhibits that are prepared to go to the
24 jury are those that have been admitted?

25 MR. VICK: Yes.

1 THE COURT: You both have reviewed them?

2 MS. WOODS: Yes, your Honor.

3 THE COURT: All right. So I am now going to
4 have you just review the instructions that I just
5 read to them, and that will go back as well.

6 All right.

7 So I'm going to have my bailiff then take
8 those exhibits back. What about the CD?

9 MS. WOODS: I do have a laptop, I have to go
10 and get it, that is totally clean. If you're aware,
11 there are no programs on it, it does not have
12 Internet capability.

13 MR. VICK: That's fine.

14 THE COURT: All right. We can go off the
15 record.

16 - - -

17 (Thereupon, a recess was taken.)

18 - - -

19 THE COURT: Okay. Both sides have read
20 through the instructions and no one has any changes,
21 deletions or additions, so those will be going back
22 to the jury now, too. Thank you.

23 MR. VICK: Okay. Thank you, Judge.

24 - - -

25 (Thereupon, a recess was taken.)

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THE COURT: All rise for the jury.

All right. You may be seated.

All right. We are back on the record in the case of State of Ohio versus Anthony Novak.

It's been brought to my attention that the jury has reached a verdict. Is that correct?

A JUROR: Correct.

A JUROR: Yes, Your Honor.

THE COURT: Will the foreperson please hand to my bailiff the verdict forms.

All right. Will the Defendant please rise.

State of Ohio versus Anthony Novak, Disrupting Public Services, Jury Verdict. We, the Jury in this case, being duly impaneled and sworn, do find the Defendant, Anthony Novak, not guilty of disrupting public services, in violation of 2909.04(B) of the Ohio Revised Code as charged in the indictment.

And it is signed by all 12 members of the jury, with the foreperson signing first.

All right. Anything further on behalf of the State or the Defense?

MS. WOODS: Nothing on behalf of the State, Your Honor.

1 THE COURT: And do you wish to have the jury
2 polled?

3 MS. WOODS: No, Your Honor, we do not.

4 THE COURT: Okay. Ladies and gentlemen, this
5 now concludes your service in this case. You are
6 free to discuss this case with whomever you shall
7 choose. I am going to excuse you at this time and
8 ask that you go back to your jury deliberation room
9 and I will be in with you momentarily.

10 All rise for the jury.

11 - - -

12 (Thereupon, the jury was excused.)

13 - - -

14 THE COURT: All right. You may be seated.

15 Okay. Is there anything anyone else needs to
16 put on the record?

17 MS. WOODS: Nothing on behalf of the State,
18 Your Honor.

19 THE COURT: All right. You are now,
20 Mr. Novak, discharged of this case and you are free
21 to go.

22 MR. VICK: Thank you, Your Honor.

23 THE COURT: Okay.

24 MS. WOODS: Your Honor, may we talk to the
25 jury?

1 THE COURT: If you wish to. I mean, it's
2 sort of late, so I'll see. I'm only going to talk
3 to them very briefly, just to let them know what to
4 do next. But I'll check, if you want to wait
5 around.

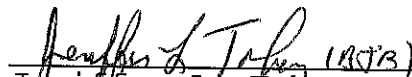
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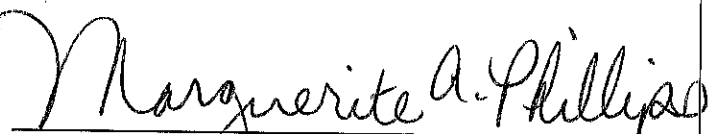
8 (Thereupon, proceedings were concluded.)
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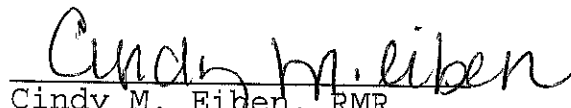
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C E R T I F I C A T E

We, Marguerite A. Phillips, Jeniffer L. Tokar, and Cindy M. Eiben, Official Court Reporters for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that we are employed as Official Court Reporters, and we took down in stenotypy all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that we have transcribed our said stenotype notes into typewritten form, as appears in the foregoing Transcript of Proceedings; that said transcript is a complete record of the proceedings had in the said cause, and constitutes a true and correct Transcript of Proceedings had therein.


Jeniffer L. Tokar, RMR
Official Court Reporter
Cuyahoga County, Ohio


Marguerite A. Phillips, RMR
Official Court Reporter
Cuyahoga County, Ohio


Cindy M. Eiben, RMR
Official Court Reporter
Cuyahoga County, Ohio